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Wednesday
November 16, 1983

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Selected Subjects

Agricultural Research
Agricultural Marketing Service

Air Pollution Control
Environmental Protection Agency

Animal Diseases
Animal and Plant Health Inspection Service

Banks, Banking
Federal Deposit Insurance Corporation

Crop Insurance
Federal Crop Insurance Corporation

Endangered and Threatened Species
Endangered and Theatened Species Committee
Fish and Wildlife Service
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Food Ingredients
Food and Drug Administration

Government Contracts
Immigration and Naturalization Service

Grant Programs—Energy
Health and Human Services Department

Income Taxes
Internal Revenue Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Marketing Agreements
Agricultural Marketing Service

Motor Vehicle Pollution
Environmental Protection Agency

Motor Vehicle Safety
National Highway Traffic Safety Administration

Organization and Functions (Government Agencies)
Immigration and Naturalization Service

Pesticides and Pests
Environmental Protection Agency

Postal Service
Postal Service

Surface Mining
Surface Mining Reclamation and Enforcement Office

Wages
Personnel Management Office

Water Pollution Control
Environmental Protection Agency

Wine
Alcohol, Tobacco and Firearms Bureau

Contents

Federal Register
Vol. 48, No. 222
Wednesday, November 16, 1983

Agricultural Marketing Service
RULES
52027 Pears (Buerre D'Anjou, etc.) grown in Calif., Oreg., and Wash., et al.
52028 Raisins produced from grapes grown in Calif.
52027 Tomatoes grown in Fla.
PROPOSED RULES
52071 Floral research and consumer information; decision on proposed and referendum orders

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Packers and Stockyards Administration; Soil Conservation Service.

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
52088 Wine labeling and advertising; appellations of origin and placement of name and address and net contents

Animal and Plant Health Inspection Service
RULES
Animal and poultry import restrictions:
52030 Horses from Italy; contagious equine metritis (CEM); interim rule affirmed

Arms Control and Disarmament Agency
NOTICES
Meetings:
52106 General Advisory Committee

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
52118 Procurement list, 1984; additions and deletions

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service; National Telecommunications and Information Administration.
NOTICES
Meetings:
52107 Industrial Competitiveness, President's Commission

Customs Service
RULES
52031 Drawback; specialized and general provisions, correction

Defense Department
See Navy Department.

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
52141 Eli Lilly Industries, Inc.

Education Department
NOTICES
Meetings:
52118 International Education Programs National Advisory Board

Endangered Species Committee
PROPOSED RULES
52099 Exemption applications process

Energy Department
See also Federal Energy Regulatory Commissions; Southwestern Power Administration.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
52119 European Atomic Energy Community
52119 European Atomic Energy Community and Switzerland

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
52170 Gaseous emissions; 1985 and later model year light-duty trucks, heavy duty engines and 1978 motorcycles
Air quality implementation plans; approval and promulgation; various States:
52054 California
52055 North Carolina
Air quality planning purposes; designation of areas:
52057 California
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
52093 Indiana
52093 Nevada
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
52097 Isophorone
Water pollution control:
52279 National pollutant discharge elimination system; permit requirements
52258, 52272 Secondary treatment information (2 documents)
NOTICES
Pesticide registration, cancellation, etc.:
52124 Rohm & Haas Co. et al.

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
52067 Rice

Federal Deposit Insurance Corporation
RULES
52030 Deposit insurance coverage; clarification and definition; amount of insured deposit

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
52058 Louisiana et al.

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
52031 First sellers; gas sales contracts; delivery and compression allowances; rehearing granting and denying in part; correction
NOTICES
Hearings, etc.:
52119 K N Energy, Inc.
52120 Northern Natural Gas Co.
52120 Peoples Natural Gas Co.
52120 Tennessee Gas Pipeline Co.
52120 Valero Interstate Transmission Co. et al.

Federal Maritime Commission
NOTICES
52124 Agreements filed, etc.

Federal Procurement Policy Office
NOTICES
52145 Minority business participation in advertising contracts (Policy Letter 78-1); rescission

Federal Reserve System
NOTICES
Applications, etc.:
52125 F & M Bancorporation, Inc., et al.
52125 Learners Financial Corp.
52125 L.N.B. Bancorp. Inc. et al.
52126 Norstar Bancorp, Inc.
52153 Meetings; Sunshine Act

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
52151 Cal-Farm Insurance Co.
52151 Erie Insurance Co.
52151 Industrial Indemnity Co. of Northwest
52152 St. Paul Mercury Insurance Co.

Fish and Wildlife Service
PROPOSED RULES
52099 Endangered Species Committee; exemption applications process

Food and Drug Administration
RULES
GRAS or prior-sanctioned ingredients:
52032 Niacin and niacinamide
PROPOSED RULES
Human drugs:
52079 Antitussive drug products (OTC); tentative monograph; correction
NOTICES
Laser variance approvals, etc.:
52126 Chaps Disco et al.

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
52107 Mississippi
52108 New York
52108 North Carolina
52109 Vermont

Health and Human Services Department
See also Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health.
RULES
Grants, administration:
52059 Low income home energy assistance; reallotment report; adjustment of annual median income for household size

Health Resources and Services Administration
NOTICES
52127 Advisory committee reports, annual; availability

Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
52029 Palermo, Italy; immigration office closing
Transportation line contracts:
52029 Worldways Canada Ltd.

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Income and employment taxes:
52033 Due diligence and certification requirements; taxpayer identification numbers and backup withholding; temporary; correction
Income taxes:
52033 Foreign taxes creditability against U.S. income tax liability; final; correction
PROPOSED RULES
Income taxes:
52081 Brother-sister controlled group of corporations or businesses; 80% control test
52079 Property transferred in connection with performance of services
52087 Return preparers; record retention requirements, etc.

International Trade Administration
NOTICES
Antidumping:
52110 Carbon steel wire rod from Brazil
52111 Carbon steel wire rod from Tobago and Trinidad
Countervailing duties:
52111 Forged undercarriage components from Italy

International Trade Commission
NOTICES
Import investigations:
52134 Direct current brushless axial flow fans
52134 Fall-harvested round white potatoes from Canada
52134 Flat-rolled carbon steel products from Brazil
52136 Glass tempering systems
52136, 52137 Heavy-duty staple gun tackers (3 documents)
52137, 52138 Liquid crystal display watches with rocker switches (2 documents)
52135 Pads for woodwind instrument keys from Italy

52134 Plastic-capped decorative emblems
52138 Steel valves and parts from Japan

Interstate Commerce Commission
RULES
Practice and procedure:
52066 Securities regulations; elimination and modification; correction
NOTICES
Railroad operation, acquisition, construction, etc.:
52139 Everett Railroad Co.
Railroad services abandonment:
52138 Burlington Northern Railroad Co.
52139 Southern Pacific Transportation Co.

Justice Department
See also Drug Enforcement Administration; Immigration and Naturalization Service; Juvenile Justice and Delinquency Prevention Office.
NOTICES
52140 Attorney General's Task Force on Family Violence; hearings
Committees; establishment, renewals, termination, etc.:
52139 Attorney General's Task Force on Family Violence
Pollution control; consent judgments:
52140 Public Service Co. of New Mexico, Inc.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
52141 Juvenile Justice and Delinquency Prevention National Advisory Committee

Land Management Bureau
RULES
Recreation management:
52058 Prohibited acts and penalties; correction
NOTICES
Coal leases, exploration licenses, etc.:
52128 Colorado
52129 Kentucky
Disposal of public lands:
52129 New Mexico
Sale of public lands:
52130 Idaho; correction
52130 Wyoming; correction
Survey plat filings:
52130 California (2 documents)

Management and Budget Office
See also Federal Procurement Policy Office.
NOTICES
52144 Procurement data reporting requirements; establishment (Policy Letter 80-8, Transmittal No. 3)

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
52131 St. George Basin, Alaska OCS
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
52131 Mark Producing

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
52061 Glazing materials; glass-plastic glazing
PROPOSED RULES
Motor vehicle safety standards:
52098 Motorcycle brakes; rulemaking petition

National Institutes of Health
NOTICES
Meetings:
52127 Dental Research Institute, National; Scientific Counselors Board
52128 Eye Institute, National; Scientific Counselors Board

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
52066 Stone crab and shrimp, Gulf of Mexico; emergency rule; correction
PROPOSED RULES
52099 Endangered Species Committee; exemption applications process

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
52131 Fort Scott National Historic Site, Kans.

National Technical Information Service
NOTICES
52116 Inventions, Government-owned; availability for licensing

National Telecommunications and Information Administration
NOTICES
Meetings:
52117 Frequency Management Advisory Council

Navy Department
NOTICES
Environmental statements; availability, etc.:
52118 Gila River Indian Reservation, Phoenix, Ariz.; prototype guayle rubber production and processing operation, development; correction

Nuclear Regulatory Commission
NOTICES
52141 Agency information collection activities under OMB review
Applications, etc.:
52141 Cornell University
52142 Iowa Electric Light & Power Co.
52143 Pennsylvania Power & Light Co. et al.
52143 Shelwell Services, Inc.
52153 Meetings; Sunshine Act

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
52106 Murfreesboro Livestock Center, Tenn.
52106 Southeastern Livestock Service & Auction, Inc., Ala.

Personnel Management Office
RULES
Pay administration:
52025 Pay under other systems; Senior Executive Service, performance awards; interim rule

Postal Service
RULES
Domestic Mail Manual:
52054 Second-, third-, and fourth-class bulk mailings; bundling and palletizing; further modification

Research and Special Programs Administration
NOTICES
Hazardous materials:
52148 Applications; exemptions, renewals, ect.

Securities and Exchange Commission
NOTICES
52145 Agency information collection activities under OMB review
Hearings, ect.:
52145 Alabama Power Co. et al.
52146 Associated Natural Gas Co.
Self-regulatory organizations; proposed rule changes:
52146 New York Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
52147 Midwest Stock Exchange, Inc.

Soil Conservation Service
NOTICES
Watershed projects; deauthorization of funds:
52106 Avalon-Alacran Watershed, N. Mex.

Southwestern Power Administration
NOTICES
52122 Transmission rates, proposed; order approving submission to Federal Energy Regulatory Commission

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
52034 West Virginia
PROPOSED RULES
Permanent program submission; various States:
52092 West Virginia

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
52117 China

Transportation Department
See also National Highway Traffic Safety Administration; Research and Special Programs Administration.
NOTICES
52147 Automobile insurance, no-fault, update of 1977 study; inquiry

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service; Fiscal Service; Internal Revenue Service.
NOTICES
Meetings:
52151 National Center for State and Local Law Enforcement Training Advisory Committee

Veterans Administration
NOTICES
52152 Agency information collection activities under OMB review
Environmental statements; availability, ect.:
52152 Bath, N.Y.

Separate Parts In This Issue

Part II
52170 Environmental Protection Agency

Part III
52258 Environmental Protection Agency

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
534.....52025

7 CFR
927.....52027
931.....52027
966 (2 documents).....52027
971.....52027
989.....52028

Proposed Rules:
424.....52067
1290.....52071

8 CFR
100.....52029
238.....52029

9 CFR
92.....52030

12 CFR
330.....52030

18 CFR
271.....52031

19 CFR
191.....52031

21 CFR
182.....52032
184.....52032

Proposed Rules:
341.....52079

26 CFR
1.....52033
4.....52033
35a.....52033

Proposed Rules:
1 (3 documents).....52079–52087
11.....52081
13.....52081
301.....52087

27 CFR

Proposed Rules:
4.....52088

30 CFR
948.....52034

Proposed Rules:
948.....52092

39 CFR
111.....52054

40 CFR
52 (2 documents).....52054, 52055
81.....52057
86.....52170

Proposed Rules:
52 (2 documents).....52093, 52094
81.....52094
122.....52279
133 (2 documents).....52258, 52272
180.....52097

43 CFR
8360.....52058

44 CFR
64.....52058

45 CFR
96.....52059

49 CFR
571.....52061
1175.....52066
1176.....52066

Proposed Rules:
571.....52098

50 CFR
645.....52066
648.....52066

Proposed Rules:
450.....52099
451.....52099
452.....52099
453.....52099

Rules and Regulations

Federal Register
Vol. 48, No. 222
Wednesday, November 16, 1983

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Pay Under Other Systems

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: These interim regulations prescribe the criteria for the payment of performance awards to career appointees in the Senior Executive Service (SES). Under the regulations, the total amount of award payments in a fiscal year in an agency may not exceed 3 percent of the aggregate payroll for SES career appointees in the agency as of the end of the performance appraisal period. The number of awards may not exceed 50 percent of the SES career appointees as of the end of the performance appraisal period, but OPM will issue guidance to limit the total number of awards to between 30 and 35 percent of eligibles for Fiscal Year 1984. Individual awards may not be less than 5 percent nor more than 20 percent of basic pay. Agencies must obtain the prior approval of the Office of Personnel Management on their proposed distribution of awards before payment may be made. These provisions are intended to assure that there is consistency in the payment of awards between agencies and that total award payments are fiscally responsible.

DATES: *Effective Date:* November 16, 1983 and until final regulations are issued.

Comment Date: Written comments will be considered if received no later than January 16, 1984.

ADDRESS: Send or deliver wirtten comments to the Associate Director, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street, NW., Room 5305, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632–4625.

SUPPLEMENTARY INFORMATION: Under the provisions of the Civil Service Reform Act (CSRA) of 1978 (Pub. L. 95–454), career appointees in the Senior Executive Service may receive awards in an amount not to exceed 20 percent of basic pay to encourage excellence in performance. (SES noncareer and limited appointees are not eligible for performance awards under the Act.) There is a 50 percent restriction in the CSRA on the number of performance awards may be paid in each agency.

When the first agencies to distribute performance awards gave them to near the maximum number permitted under the law, the Congress in July 1980 amended an appropriations act to reduce the allowed number from 50 percent to 25 percent. The reason given was that the Congress did not intend when passing the CSRA that all agencies award at the statutory limit, but that awards be limited to those executives whose work truly deserved them. There was also concern expressed that agencies would award too many individual bonuses at or near the maximum 20 percent rate of basic pay.

The limit on the number of executives eligible to receive a performance award was subsequently reduced further to 20 percent for Fiscal Years 1982 and 1983 through new appropriations restrictions. For Fiscal Year 1984, however, no appropriations restrictions have been placed on performance awards, so that the number of eligibles will revert to the 50 percent limitation in the CSRA, 5 U.S.C. 5384(b)(3).

With the ability of agencies now to award up to 50 percent of their SES career appointees, instead of the 20 percent in Fiscal Years 1982 and 1983, the costs of award payouts would be 2½ times greater if agencies increased the number receiving awards to the maximum allowed and maintained the same average payment. Such a large increase could endanger support of the awards program by both the public and the Congress. When compared to the total Federal budget, the amount of money involved in the awards program is not relatively large. At a time when many programs have had to accept decreased funding because of budgetary reasons, however, we do not believe it would be in the long term interest of the performance awards program or the SES itself for awards payments to increase by such a large amount.

We have discussed with agencies two possible ways to maintain adequate controls over awards expenditures. One way would be to put a dollar limitation on the expenditures. The other way would be to restrict the number of SES members receiving awards to somewhere between the 50 percent limit in 5 U.S.C. 5384 and the 20 percent limit under the former appropriations restrictions. The consensus of opinion was to combine the two options, but in a way to leave agencies the maximum flexibility to operate their awards program.

First, agency officials agreed there needs to be a specific limitation on total dollar expenditures. Therefore, the regulations state that the total amount of performance awards paid during a fiscal year in an agency may not exceed 3 percent of the aggregate payroll for SES career appointees in the agency as of the end of the performance appraisal period. This 3 percent limitation compares with a figure of approximately 2 percent paid in performance awards during fiscal year 1982, the last year for which full data are available, and a figure of approximately 5 percent that could be paid if there was no dollar limitation and agencies made awards to the full 50 percent eligible at the current average payment.

Second, the agency officials did not believe that the regulations should set a specific lower limit than the 50 percent in law on the number eligible for bonuses, because of differing circumstances in different agencies. They recommended instead that the Office of Personnel Management issue guidance which would result in awards going to somewhere between the 20 percent permitted by the former appropriations restrictions and the 50 percent CSRA limit.

Therefore, the regulations also state that the Office of Personnel Management shall issue guidance on the distribution of performance awards, including how many appointees should receive awards at the different percentage levels up to 20 percent of basic pay. It is our view that the combination of the limitation on total

dollar expenditures in an agency and the distribution guidance will mean that generally agencies will be allowed to pay performance awards to up to 30 to 35 percent of career appointees in Fiscal Year 1984. The guidance will also provide for an equitable and appropriate distribution of award amounts so that awards actually reflect differing levels of performance and that not all awards are paid at either the maximum or minimum level.

We have provided in the regulations a minimum award payment of 5 percent to an individual. We believe 5 percent is a more appropriate minimum payment than the 3 percent we previously had in guidance if the award is to be of sufficient size to adequately reward outstanding executive performance and to serve as a motivator to others to achieve such performance.

The regulations also incorporate previous guidance that the base for the calculation of the restriction on the number eligible for performance awards (i.e., 50 percent) should be the number of career appointees as of the end of the performance appraisal period. Although the Civil Service Reform Act referred to SES "positions" in applying the 50 percent figure, the Congress indicated when acting on the appropriations restrictions that it intends that only personnel "qualified" for performance awards, i.e., career appointees, should be counted. Further, the General Accounting Office has pointed out in two reports that using positions in determining the base would create inequities between agencies by including vacancies and positions filled by noncareer and limited appointees. It is OPM's intent, however, that the base may include a position filled by Presidential appointment with Senate confirmation when occupied by a former SES career appointee who elected under 5 U.S.C. 3392(c) to retain SES performance award eligibility.

Although the 50 percent statutory limitation on the number eligible to receive awards has an exception for agencies with fewer than four SES positions, the regulations apply the limitation to all agencies. An agency with only one career appointee will be allowed to make one award payment. (It should be noted that the Fiscal Year 1983 appropriations restriction of 20 percent also applied to all agencies, with a provision that an agency could pay at least one award.) Because of the limit that will be set on total agency award expenditures and the 5 percent minimum payment to an individual, an agency with three or fewer career appointees likely would be able to pay only one award in any event.

In order to assure that agency award payments are distributed in an equitable manner, the regulations provide that agencies must submit their proposed distribution of awards to the Office of Personnel Management for review and approval before payment. It is not the intent of this requirement that the Office will review individual proposed awards, but rather that the Office will look at the overall distribution pattern of the award payments.

Guidance to implement these regulations will ask agencies to give additional top management attention when making performance awards to assure that they are fair, that they are truly based on performance, and that reasonable internal controls are placed upon the number of awards. Agencies have already been told that award payments out of Fiscal Year 1984 funds are not to be made until the interim regulations and implementing guidance are published.

In addition to the above changes, the title of Subpart D has been revised to take into account that it now covers both the setting of individual basic pay for SES members and the payment of performance awards.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to assure that there are adequate controls over expenditures for performance awards paid out of Fiscal Year 1984 funds.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b), of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 534

Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management is amending Subpart D of 5 CFR Part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The heading for Subpart D is revised to read as follows:

Subpart D—Pay under the Senior Executive Service

2. Section 534.403 is added to read as follows:

* * * * *

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to Career appointees in the Senior Executive Service.

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed 3 percent of the aggregate payroll for Senior Executive Service career appointees in the agency as of the end of the performance appraisal period. The Office of Personnel Management may provide an exception for an agency with three or fewer career appointees.

(c) The total number of performance awards paid during a fiscal year by an agency may not exceed 50 percent of the number of Senior Executive Service positions in the agency occupied by career appointees as of the end of the performance appraisal period. An agency with one career appointee may pay one award.

(d) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period.

(e) The Office of Personnel Management shall issue guidance concerning the distribution of performance awards within an agency.

(f) Agencies shall submit their proposed distribution of performance awards, the proposed total amount of awards, and the aggregate payroll for Senior Executive Service career appointees to the Office of Personnel Management for review and approval of the distribution prior to payment of the awards.

(5 U.S.C. 5385)

[FR Doc. 83-30794 Filed 11-15-83; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Amdt. No. 2]

Handling Regulation; Tomatoes Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to rule.

SUMMARY: This amendment to handling regulation § 966.323 prohibits the shipment of Florida tomatoes in used boxes and eliminates the commingling of tomatoes of different sizes. These changes will promote orderly marketing by upgrading tomato packs and standardizing shipments.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 475–3930.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 966) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0073.

This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Under Section 608c(6) of that act the agency is required to apply this rule uniformly upon those subject to the order. The amendment is designed to promote orderly marketing of the Florida tomato crop for the benefit of producers and consumers, and would not substantially affect costs for the directly regulated handlers.

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966) regulate the handling of tomatoes grown in designated counties of Florida. The Florida Tomato Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in September 1982 the committee recommended, and the Secretary approved, a regulation which continues in effect from marketing season to marketing season unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary.

At its annual meeting in Port St. Lucie on September 9, 1983, the committee unanimously recommended that two changes be made in the continuing handling regulation this season. The committee recommended that the shipment of tomatoes in used cartons be prohibited. Several shippers in Florida pack tomatoes in cartons previously used by another shipper. This was permitted if the words "USED BOX" and the second shipper's identity appeared on the container's lid. Since the used containers generally were packed with lower quality tomatoes, the reputation of the original shipper suffered since his label remained on the carton. The amendment eliminates this problem.

The handling regulation establishes four tomato size classifications and prohibits commingling the different sizes, except that the largest sizes—the 6x6 and the 5x6 and Larger—could be commingled in the past. Containers with these commingled sizes, designated as "6x6 and Larger," contained almost exclusively tomatoes which fell into the 6x6 size category. Since this pack competed directly with the larger tomatoes, returns for the larger sizes were adversely affected by this practice. The committee recommended eliminating this commingling to increase tomato returns and to promote more uniformity of pack.

Findings

After consideration of all relevant matters, it is found that the amendment will standardize and upgrade the pack of tomatoes shipped from the production area, thereby promoting orderly marketing, and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that: (1) Shipments of tomatoes from the production area have already begun; (2) to maximize the benefits of orderly marketing, the regulation should apply to as many shipments as possible during the marketing season; (3) notice was given in the October 13 **Federal Register** (48 FR 46544) allowing interested persons until October 28, 1983, to file written comments and none was received; and (4) compliance with this regulation, which is similar to regulations issued during previous seasons requires no special preparation on the part of handlers which cannot be completed by the effective date.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

PART 966—[AMENDED]

Section 966.323 (47 FR 58213 and 48 FR 26757) is further amended by revising paragraphs (a)(2)(ii) and (iii) and paragraphs (a)(3)(ii) and (iii) as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container and inspection requirements.*

* * * * *

(2) *Size.*

* * * * *

(ii) Tomatoes of designated sizes may not be commingled, and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are at least 2 $^{2}/_{32}$ inches in diameter, the containers shall be marked 5x6 and Larger.

(3) *Containers.*

* * * * *

(ii) Each container, or its lid, shall be marked to indicate the designated net weight and must show the name and address of the registered handler in letters at least one-forth (¼) inch high.

(iii) The container in which the tomatoes are packed must be clean and bright in appearance without marks, stains, or other evidence of previous use.

* * * * *

(Approved by the Office of Management and Budget under Control No. 0581–0073)

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 10, 1983, to become effective November 16, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-30671 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 927, 931, 966, and 971

Expenses and Rates of Assessment for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenditures and establishes

assessment rates under Marketing Orders 927, 931, 966, and 971 for the 1983–84 fiscal periods. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1983–June 30, 1984 (§§ 927.223, 931.218); August 1, 1983–July 31, 1984 (§§ 966.221, 971.223).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities because they would not measurably affect costs for the directly regulated handlers.

These marketing orders are effective under the Agricultual Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses and rates of assessment is necessary without delay. It is necessary to effectuate the declared policy of the Act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Parts 927, 931, 966, and 971

Marketing agreements and orders, Pears, Washington, Oregon, Tomatoes, Florida, Lettuce, Texas.

The following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations.

Title 7 of the Code of Federal Regulations is amended by adding the following sections:

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

§ 927.223 Expenses and assessment rate.

Expenses of $255,097 by the Control Committee are authorized, and an assessment rate of $0.02 per Western Standard pear box of pears is established for the fiscal period ending June 30, 1984. Unexpended funds may be carried over as a reserve.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

§ 931.218 Expenses and assessment rate.

Expenses of $50,099.00 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.0125 per Western Standard pear box of pears is established for the fiscal period ending June 30, 1984. Unexpended funds may be carried over as a reserve.

PART 966—TOMATOES GROWN IN FLORIDA

§ 966.221 Expenses and assessment rate.

Expenses of $195,000 by the Florida Tomato Committee are authorized, and an assessment rate of $0.0035 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1984. Unexpended funds may be carried over as a reserve.

PART 971—LETTUCE GROWN IN SOUTH TEXAS

§ 971.223 Expenses and assessment rate.

Expenses of $42,785 by the South Texas Lettuce Committee are authorized for the fiscal period ending July 31, 1984. During this fiscal period, an assessment rate of $0.03 per carton of lettuce is established. Unexpended funds may be carried over as a reserve.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Dated: November 9, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-30816 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Change in Weight Dockage System

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds Monukka raisins under a weight dockage system for immaturity under the Federal marketing order for California raisins. The inclusion of this varietal type of raisin under the dockage system permits handlers of Monukka raisins to acquire them as natural condition standard raisins even though the lot has been determined to be off-grade because of an excess of immature raisins. This action is based on a unanimous recommendation of the Raisin Administrative Committee. The Committee works with USDA in administering the order.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective date of this action 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are acquiring 1983–84 crop Monukka raisins in volume. Therefore, prompt implementation of this action is necessary as soon as possible so that raisin producers and handlers can utilize the weight dockage system for 1983–84 crop Monukka raisins.

The weight dockage system is contained in § 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210–989.221; 48 FR 35347). This subpart is operative pursuant to the marketing agreement, and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter

referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Notice of this action was published in the **Federal Register** on September 23, 1983 (48 FR 43338) and invited written comments until October 11, 1983. None was received.

This action revises § 989.210 to include Monukka raisins under the weight dockage system for immaturity. The inclusion of this varietal type of raisin under the dockage system permits handlers of Monukka raisins to acquire them as natural condition standard raisins even though the raisins have been determined to be off-grade because of an excess of immature raisins. The immatue raisins usually can be removed from the lot of raisins by the handler during normal processing so the balance of the lot meets grade requirements. The creditable weight of such lot is computed by multiplying the net weight of the lot by a dockage factor. The factor reduces the weight of the lot by an amount approximating the weight of the immature raisins needed to be removed from the lot in order for the balance of the lot to meet grade requirements.

Permitting handlers to acquire low maturity Monukka raisins as standard raisins under this system would speed up acquisitions, save inspection costs, and save the producers of such raisins additional reconditioning costs.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Raisin Administrative Committee, and other information, it is determined that the change in the weight dockage system, hereinafter set forth, will tend to effectuate the declared policy of the act.

PART 989—[AMENDED]

Therefore, the final rule is as follows:

Subpart—Supplementary Regulations

§ 989.210 [Amended]

In § 989.210, paragraphs (a) through (f) are amended by removing the word "and" before "Dipped Seedless," and adding "Monukka" after "Dipped Seedless,".

List of Subjects in 7 CFR Part 989

Marketing agreements and orders; Grapes, Raisins, California.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 9, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-30617 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Immigration Offices in Foreign Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Service organizational statement to reflect the closing of the immigration office in Palermo, Italy. This change is made for more efficient management.

EFFECTIVE DATE: July 30, 1983.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633–3048

For Specific Information: Ellis B. Linder, Immigration Inspector, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633–2361

SUPPLEMENTARY INFORMATION: Service management conducted a detailed work analysis study of the Palermo, Italy suboffice. In view of declining caseload at Palermo, it has been determined that it was not cost effective to maintain an Officer-in-Charge and staff to continue the operations of that office. Therefore, the Palermo, Italy suboffice was closed on July 30, 1983 and all areas of responsibility formerly handled by Palermo along with personnel were transferred to the Naples, Italy suboffice.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not required as this rule deals solely with agency management and organization.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities. This rule is not a major rule as defined in section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure (Government agencies), Organization and functions (Government agencies), Authority delegation, Jurisdictions.

PART 100—STATEMENT OF ORGANIZATION

Accordingly, Title 8, Chapter 1 of the Code of Federal Regulations is amended as follows:

§ 100.4 [Amended]

In § 100.4, paragraph (c)(4), *Immigration offices in foreign country,* is amended by removing "Palermo, Italy" from the listing.

* * * * *

(Sec. 103, Immigration and Nationality Act, as amended; 8 U.S.C. 1103)

Dated: November 9, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 83-30626 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Addition of Worldways Canada Limited

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of Worldways Canada Limited.

EFFECTIVE DATE: October 31, 1983.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Worldways Canada Limited on October 31, 1983 to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier's name to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Accordingly, Chapter I of Title 8 of Code of Federal Regulations is amended as follows:

§ 238.4 [Amended]

Section 238.4 is amended as follows:

Add the name "Worldways Canada Limited" under "At Toronto".

(Secs. 103 and 238, Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: November 9, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 83-30825 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-094]

Restrictions on Importation of Horses From Italy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which added Italy to the list of countries from which or through which horses are prohibited importation into the United States because of contagious equine metritis (CEM). This rule is necessary because CEM has been found to exist in Italy, and restrictions on the importation of horses from Italy are needed in order to protect the livestock of the United States from the disease.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, VS, APHIS, USDA, Federal Building, Room 838, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1983, a document was published in the **Federal Register** (48 FR 19868-19869), setting forth an interim rule amending § 92.2(i)(1) of the regulations. This interim rule added Italy to the list of countries where CEM exists and from which and through which the importation of horses into the United States is prohibited. Italy was added to the list because the existence of CEM in that country was confirmed on March 28, 1983.

The interim rule was made effective on the date it was signed, April 27, 1983, in order to protect the livestock industry of the United States against CEM.

Comments were solicited in response to the interim rule and none were received. The factual situation which was set forth in the document of May 3, 1983, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1512-1, and has been determined to be not a "major rule." The Department has determined that this action will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291 and the Department of Agriculture has waived the requirements of Secretary's Memorandum 1512-1.

This action affirms an interim rule which lists Italy as a country where CEM exists and which prohibits, because of the existence of CEM, the importation into the United States of certain horses which are from Italy or which have been in Italy within the 12 months immediately preceding their export to the United States.

Between December 9, 1982, when similar restrictions previously applied to horses from Italy were removed, and April 27, 1983, when the interim rule became effective, only 4 horses were imported into the United States from Italy. This compares with about 6,000 horses imported into the United States each year from countries where CEM is known to exist and approximately 40,000 horses of all classes imported into the United States in Fiscal Year 1982.

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock and livestock products, Quarantine, Transportation.

Accordingly, it has been determined that the interim rule is adopted as final.

(Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 76 Stat. 130, 132 (21 U.S.C. 111, 134c, 134f); 7 CFR 2.17, 2.51, 371.2(d))

Done at Washington, D.C., this 9th day of November, 1983.

D. F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 83-30886 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

Clarification and Definition of Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending Part 330 of its regulations ("Clarification and Definition of Deposit Insurance Coverage") by adding a new section that would define the amount of an insured deposit, taking into account accrued or anticipated interest or earnings on deposits and will include them as part of the deposits for deposit insurance purposes. This regulation provides a method for determining interest on deposits for insurance purposes where no interest rate is provided for by contract.

EFFECTIVE DATE: December 16, 1983.

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel or Fredric H. Karr, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202) 389-4171.

SUPPLEMENTARY INFORMATION: At present, the FDIC does not have a specific regulation setting forth the

procedures for accrual of interest for purposes of paying off an insured deposit. However, as a matter of practice, interest is accrued at the contract rate on deposits to the date of the bank's closing in determining the amount of a deposit for insurance purposes. Two major issues have caused the FDIC Board of Directors ("Board") to reevaluate its practices with regard to determining the amount of accrued interest on deposits and thus to arrive at the final amount of a deposit, insofar as liquidation procedures are concerned. First, there are differences in the rights of mutual savings bank depositors as contrasted with commercial bank depositors, at least as far as the payment of earnings on savings deposits is concerned. The second major issue for consideration involves the "zero-interest" certificate of deposit, sold at a discount with no stated rate of interest.

To resolve these issues, as well as to consider any other concerns which the public might have had, the FDIC on July 15, 1983 published for public comment a proposed rule in the **Federal Register** (48 FR 32356–57), which added a new section to Part 330 of its regulations ("Clarification and Definition of Deposit Insurance Coverage"). The date for public comment expired on September 13, 1983, and the FDIC received two written comments both in support of the proposed regulation. Therefore, based upon review of all the relevant information, the FDIC's Board has decided to adopt this regulation in its proposed form. In its July 15, 1983 notice the Board set forth reasons for adopting this proposal, particularly noting that its adoption would eliminate possible confusion in the future as to the amount of an insured deposit in the event of the failure of an FDIC-insured depository institution. The Board also noted at that time that the adoption of this rule would not bring into play either the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or the Paperwork Reducton Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 330

Banks, banking, Deposit insurance.

PART 330—[AMENDED]

12 CFR is amended as follows:

1. The authority citation for Part 330 reads as follows:

Authority: 12 U.S.C. 1813, 1817, 1821, 1822.

2. In Part 330, the text is amended by adding a new section to read as follows:

§ 330.15 Amount of insured deposit.

(a) For those depository institutions where earnings on any savings deposit are calculated at a contract rate, the amount of an insured deposit is the principal amount which the insured deposit holder would have been entitled to withdraw as of the date of default of the institution, plus earnings on the deposit accrued to such date at the contract rate, without regard to whether such deposit is subject to any pledge.

(b) For those depository institutions where earnings on any deposit are calculated at an anticipated or announced rate, the amount of an insured deposit is the principal amount which the insured deposit holder would have been entitled to withdraw as of the date of default of the institution, plus the earnings on the deposit accrued to such date at the anticipated or announced rate, without regard to whether such deposit is subject to any pledge.[1] In the absence of any such announced or stated anticipated rate, such rate for savings deposits shall be the rate paid in the immediately preceding payment period.

(c) With respect to certificates of deposit sold at a discount from their face value, and for which there is no stated rate of interest, the value of the certificate shall be its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(d) For all insured banks, where there is a time deposit with a fixed or minimum term or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

By Order of the Board of Directors, November 7, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-30752 Filed 11-15-83; 8:45 am]

BILLING CODE 6714-01-M

[1] Regardless of the method of the calculation of earnings on a deposit and whether or not the deposit is subject to any pledge, said method and/or presence or absence of a pledge shall not affect the FDIC's right to deduct offsets in determining the amount of insured deposits, as set forth in section 3(m)(1) of the Federal Deposit Insurance Act.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM80-73-000 et al. and RM80-74-000 et al.; Order No. 334]

Delivery and Compression Allowances Under the Natural Gas Policy Act of 1978

Correction

In FR Doc. 83-26545 beginning on page 44495 in the issue of Thursday, September 29, 1983, make the following correction:

In § 271.1104(d)(1), on page 44508, first column, three lines from the top, "interstate" should read "intrastate".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 83-212]

Customs Regulations Revision Relating to Drawback; Specialized and General Provisions

Correction

In FR Doc. 83-27823 beginning on page 46740 in the issue of Friday, October 14, 1983, make the following corrections:

PART 191—[CORRECTED]

1. In the table of contents for Part 191, page 46753, third column, "191.26 Termination or removal" should have read "196.26 Termination or renewal".

2. Page 46754, first column, "191.113 Expiration of terms" should have read "191.113 Explanation of terms".

3. Same column, the bold type heading for Subpart N should have read as follows:

Subpart N—Same Condition and Rejected Merchandise Drawback

4. Same column, "191.141 Drawback" should have read "191.141 Same condition drawback".

§ 191.10 [Corrected]

5. In § 191.10(d), page 46756, second column, in the thirteenth and fourteenth lines from the bottom of the page, "continue until the in effect verification" should have read "continue in effect until the verification".

§ 191.31 [Corrected]

6. In § 191.31, page 46758, third column, last line of the page, there should not have been a period after the word "substitution".

§ 191.44 [Corrected]

7. In § 191.44, page 46759, third column, seventh line of the section, "15-year." should have read "15-year period."

§ 191.52 [Corrected]

8. In § 191.52(d), page 46760, first column, thirteen lines from the bottom of the page, "number. It" should have read "number, it".

§ 191.131 [Corrected]

9. In § 191.131(a), page 46766, second column, fifteen lines from the bottom of the page, "been paid continuously" should have read "been paid which has remained continuously".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 80N-0388]

GRAS Status of Niacin and Niacinamide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Food and Drug Administration (FDA) is affirming that niacin and niacinamide are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective December 16, 1983. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1530 and 184.1535 effective on December 16, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 19, 1982 (47 FR 46542), FDA published a proposal to affirm that niacin and niacinamide are GRAS for use as direct human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on niacin and niacinamide and the report of the Select Committee on GRAS Substances (the Select Committee) on niacin and niacinamide are available for public review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of niacin and niacinamide, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than for the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of niacin and niacinamide recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for niacin and niacinamide were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of niacin and niacinamide under conditions different from those set forth in this final rule has been waived.

One comment, from a producer of niacin and niacinamide, was received in response to the agency's proposal. The comment agreed with FDA's proposal but objected to the use of the term "vitamin B_3" as a synonym for niacin and niacinamide.

In the preamble to the proposal (47 FR 46543), FDA stated that "* * * niacin and niacinamide are recognized as sources of the essential micronutrient vitamin B_3." The agency has reviewed this comment and agrees that the terms vitamin B_3 and niacin and niacinamide are not synonyms. However, because the agency did not make a connection in the proposed regulations between vitamin B_3 and niacin and niacinamide, no changes in those regulations are necessary. Therefore, FDA is adopting the regulations with only minor editorial changes.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, the agency has previously considered the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by that Order. FDA has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.8530 [Removed]

a. By removing § 182.8530 *Niacin.*

§ 182.8535 [Removed]

b. By removing § 182.8535 *Niacinamide.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1530, to read as follows:

§ 184.1530 Niacin.

(a) Niacin ($C_6H_5NO_2$, CAS Reg. No. 59–67–6) is the chemical 3-pyridinecarboxylic acid (nicotinic acid). It is a non-hygroscopic, stable, white, crystalline solid that sublimes without decomposition at about 230° C. It is soluble in water and alcohol. It is insoluble in ether.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 205, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 42(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1535, to read as follows:

§ 184.1535 Niacinamide.

(a) Niacinamide ($C_6H_6N_2O$, CAS Reg. No. 98–92–0) is the chemical 3-pyridinecarboxylic acid amide (nicotinamide). It is a white crystalline powder that is soluble in water, alcohol, ether, and glycerol. It melts between 128° and 131° C.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 205, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other then current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective December 16, 1983.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: October 25, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-30807 Filed 11-15-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 4

[T.D. 7918]

Creditability of Foreign Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 48 FR 46272 of the final regulations which were the subject of Treasury Decision 7918, relating to the creditability of foreign taxes under sections 901 and 903 of the Internal Revenue Code of 1954.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after November 14, 1983. This correction is to be effective the same date.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1983, the **Federal Register** published final regulations (48 FR 46272) relating to the credibility of foreign taxes. These final regulations supersede the temporary regulations published in the **Federal Register** on November 17, 1980 (45 FR 75647).

Need for a Correction

As published, Treasury Decision 7918 incorrectly states the year "1983" instead of "1984" in the middle column, page 46296, fourth paragraph, fifth line.

Correction of Publication

Accordingly, the publication of Treasury Decision 7918 which was the subject of FR Doc. 83–27488, is corrected by removing "1983" from the fifth line, fourth paragraph (Example (5)), middle column, page 46296 and adding "1984" in its place.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83-30882 Filed 11-15-83; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 35a

[T.D. 7916]

Due Diligence and Certification Requirements With Respect to Taxpayer Identification Numbers and Backup Withholding; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 48 FR 45362 of the temporary regulations which were the subject of Treasury Decision 7916, relating to the due diligence and certification requirements with respect to taxpayer identification numbers and

backup withholding under section 3406 of the Internal Revenue Code of 1954.

EFFECTIVE DATE: The temporary regulations that are the subject of this correction are effective for payments made after December 31, 1983. This correction is to be effective with respect to the same payments.

FOR FURTHER INFORMATION CONTACT: Diane Kroupa of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202–566–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1983, the **Federal Register** published temporary regulations (48 FR 45362) relating to the due diligence and certification requirements with respect to taxpayer identification numbers and backup withholding. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369).

Need for a Correction

As published, the last paragraph of Treasury Decision 7916 contains an incomplete citation of authority. This paragraph appears in the right-hand column of page 45369, immediately before the signatures of the Commissioner and the Assistant Secretary.

Correction of Publication

Accordingly, the citation of authority for Treasury Decision 7916, which appears in the right-hand column of 48 FR 45369, is revised to read as follows:

This Treasury decision is issued under the authority contained in section 3406 (a), (b), (c), (e), (g), (h), and (i), section 6042(a), section 6044(a), section 6045, section 6049 (a), (b), and (d), section 6103(q), section 6109, section 6302(c), section 6676, and section 7805 of the Internal Revenue Code of 1954 (97 Stat. 371, 372, 373, 376, 377, 378, 379; 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i); 96 Stat. 587, 26 U.S.C. 6042(a); 96 Stat. 587, 26 U.S.C. 6044(a); 96 Stat. 600, 26 U.S.C. 6045; 96 Stat. 592, 594; 26 U.S.C. 6049 (a), (b), and (d); 90 Stat. 1667, 26 U.S.C. 6103(q); 75 Stat. 828, 26 U.S.C. 6109; 68A Stat. 775, 26 U.S.C. 6302(c); 68A Stat. 917, 26 U.S.C. 7805) and in sections 104, 105 and 108 of the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369, 371, 380, and 383).

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 83-30891 Filed 11-15-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Approval of Amendments and Removal of Conditions; West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 948 to approve amendments to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and to remove some of the conditions of the Secretary's approval on the State's program.

On February 16, April 29, June 15 and September 13, 1983, West Virginia submitted to OSM amendments to its approved permanent regulatory program, containing both statutory and regulatory revisions, which were intended to satisfy the Secretary's remaining conditions of approval of the West Virginia program. After providing opportunity for public comment and conducting a thorough review of the program amendments in accordance with 30 CFR 732.17, the Secretary has decided to approve certain of the modifications contained in the amendments and to remove some of the conditions of approval. This decision is being made retroactive to July 15, 1983, to coincide with the expiration of the State's emergency regulations.

EFFECTIVE DATE: July 15, 1983.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

ADDRESSES: Copies of the amendments to the West Virginia program and all written comments received on the proposed amendments are available for public review at the OSM Headquarters Office, the OSM Charleston Field Office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20240, Telephone: (202) 343–7896

West Virginia Department of Natural Resources, Room 630, Building 3, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone: (304) 348–9160.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the Secretary of the Interior received a proposed regulatory program from the State of West Virginia. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program (45 FR 69249–69271). West Virginia resubmitted its proposed program on December 19, 1980, and after a subsequent review the Secretary approved the program conditioned on the correction of thirty-five minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the January 21, 1981 **Federal Register** (46 FR 5915–5956).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915–5956).

On October 29, 1981, West Virginia submitted revised coal refuse regulations to OSM as an amendment to its permanent regulatory program. The amendment was conditionally approved by the Director on May 11, 1982 (47 FR 20119–20122). On September 10, 1982, the Secretary approved revisions submitted by West Virginia which satisfied a portion of the condition at 30 CFR 948.11(a)(8)(iii) (47 FR 39821–39822).

At the request of West Virginia, on October 31, 1981 (46 FR 54070–54071) the Secretary extended the deadlines for meeting certain conditions of its approved program to November 1, 1982. Also, on May 27, 1982, the Secretary extended West Virginia's deadlines for meeting the conditions requiring legislative approval to May 1, 1983, and the remaining conditions requiring regulatory change to November 1, 1982 (47 FR 23156–23157).

On September 14, 1982, and October 29, 1982, West Virginia submitted modifications to satisfy certain conditions of its program. On March 1, 1983, the Secretary announced in the **Federal Register** (48 FR 8447–8451) that the modifications submitted by West Virginia satisfied eight of the conditions of approval and the deadline for meeting all of the remaining conditions requiring regulatory reform was extended to May 1, 1983.

Background on the Secretary's Conditional Approval

The Secretary of the Interior determined that the West Virginia permanent regulatory program, as submitted for his approval, contained thirty-five minor deficiencies. As discussed, West Virginia submitted modifications which satisfied eight of the conditions (47 FR 39821–39822 and 48 FR 8447–8451), thus leaving the following twenty-seven conditions of approval:

1. West Virginia's program did not require highwall elimination where auger mining is conducted at preexisting highwalls in accordance with section 515(b)(3) of SMCRA and 30 CFR 816.102(a)(2). [Condition 30 CFR 948.11 (a)(1)]

2. The State program did not provide criteria for the design of constructed barriers which would assure protection of water quality and long term stability at least equal to that of natural barriers as required by section 515(b)(25) of SMCRA. [Condition (2)]

3. The program did not prohibit updip mining in accordance with section 516(b)(12) of SMCRA. [Condition (3)]

4. The program did not contain enacted statutory provisions which clarify the definition of "adequate treatment" in accordance with section 515(b)(10) of SMCRA. [Condition (4)]

5. The statutory provisions of the program did not define "disturbed area" to include topsoil storage areas as required by 30 CFR 701.5. [Condition (5)]

6. The program did not contain regulations designed to maximize ultimate mineral recoverability when augering operations are conducted as required by section 515(b)(9) of SMCRA and 30 CFR 819.11, and to make the prohibition of augering mandatory as in 30 CFR 819.11(e). [Condition (7)]

7. The program did not contain provisions requiring: (a) Compliance with permanent program regulations, rather than interim program regulations; (b) approval of the Mine Safety and Health Administration to direct surface runoff or slurry into an underground mine; (c) stability requirements even if site conditions indicate that failure would not occur; and (d)(i) covering of coal mining waste banks with non-toxic and non-combustible material as required by 30 CFR 816.85(d) and 817.85(d), (ii) specific construction criteria for subdrainage systems as required by 30 CFR 816.72 (b)(1) and (b)(4), (iii) the prohibition of the use of impoundments on constructed fills as required by 30 CFR 816.71(g), and (iv) the inspection of coal refuse piles as required by 30 CFR 816.71(j). [Condition (8), (i), (ii) and (iv)]

8. The program allowed, in Section 6B.07(e)(1) of the State's regulations, broad variances for special land use purposes at the director's discretion, with no regulatory criteria for his exercising this discretion as required by 30 CFR 826.15 and section 515(e) of SMCRA. [Condition (9)]

9. The program did not require completion of rough backfilling and grading in the area strip mining operations within 180 days as provided by 30 CFR 816.101(a)(3). [Condition (11)]

10. The program did not prohibit placing debris on the downslope as required by 30 CFR 826.12(a)(i)(C) and section 515(d)(1) of SMCRA. [Condition (13)]

11. The program did not limit the maximum peak particle velocity to one inch per second at any residence or other structure as required by 30 CFR 816.65. [Condition (14)]

12. The program did not contain provisions regarding the transfer of wells as required by 30 CFR 816.53 and 817.53. [Condition (16)]

13. The program was conditioned to require the submission of additional scientific data or studies demonstrating that large volumes of water runoff will not adversely affect head-of-hollow fills, along with copies of enacted regulations or other program changes, if any, necessary to correct deficiencies identified by the data provided. [Condition (18)]

14. The program did not require data on the applicant's past record of mining in accordance with sections 507(b)(3), 507(b)(5) and 510(c) of SMCRA. [Condition (19)]

15. The program contained incidental mining provisions that were not in accordance with the performance standards, permitting, and public participation requirements of SMCRA. [Condition (20)]

16. The program did not require that the public be notified of permit decisions as required by 30 CFR 786.23(e). [Condition (21)]

17. The program did not require a narrative description and map of the proposed coal exploration area if more than 250 tons of coal are to be removed as provided by 30 CFR 776.12. [Condition (23)]

18. The program contained language which, unlike section 521(a)(1) of SMCRA, provided that, except for willful or deliberate acts, neither the permittee nor his authorized agents or employees are liable for any injury sustained by a citizen accompanying an inspector onto a minesite. [Condition (24)]

19. The program did not provide for a system for assessment, enforcement and collection of civil penalties in accordance with the provisions of section 518 and the related provisions of sections 525 and 526 of SMCRA. [Condition (26)]

20. The program did not contain enacted statutory provisions which require that civil penalties for cessation orders issued for failure to abate a notice of violation be imposed on a daily basis in accordance with section 518(h) of SMCRA. [Condition (27)]

21. The program did not include statutory provisions which provide that the abatement for a validly issued cessation order does not result in the vacation of the order. [Condition (28)]

22. The statutory provisions of the State program did not provide that, in issuing cessation orders, inspectors specify the steps necessary to abate the violation in the most expeditious manner possible, including all necessary abatement measures, as required by section 521(a)(3) of SMCRA. [Condition (29)]

23. The program did not provide that an operator's unwarranted failure to abate will be considered in determining whether a show cause order should be issued and that other provisions of the State regulations are consistent with 30 CFR 843.13. [Condition (30)]

24. The statutory provisions of the program were conditioned because mining could be allowed within areas where mining is prohibited by section 522(e)(1) of SMCRA. [Condition (31)]

25. The statutory provisions of the program were conditioned to provide that the appellant does not have to bear the cost of transcribing the proceedings or pay the mileage or transportation expenses incurred by other parties as required by 43 CFR Part 4. [Condition (32)]

26. The statutory provisions of the program did not subject all members of the Reclamation Commission to the conflict of interest provisions of section 20–6–40 of the West Virginia Code. [Condition (33)]

27. The program, unlike section 507(c) of SMCRA, restricted assistance for small operators for funds provided by the Federal government. [Condition (34)]

Submission of Program Amendments

On February 16, 1983, the State of West Virginia submitted to OSM an amendment to its conditionally approved permanent regulatory program (Administrative Record No. WV 469). The proposed program amendment consisted of proposed regulations which had been revised from those approved

and in force as emergency regulations. In addition, West Virginia indicated that the proposed regulations did not incorporate the provisions of the Technical Handbook of Standards and Specifications for Mining Operations as regulation as done in the State's conditionally approved program. Instead, design criteria had been incorporated into the proposed regulations and, where necessary, appropriate references made to the Technical Handbook. The Technical Handbook would now serve as a technical guideline, rather than regulation.

On March 4, 1983, OSM announced receipt of the modifications in the **Federal Register** (48 FR 9308–9309). OSM scheduled a public hearing and comment period on the proposed revisions to the West Virginia program. The hearing was subsequently cancelled as no one expressed an interest in presenting testimony at the hearing. The comment period closed on April 4, 1983.

On April 29, 1983, West Virginia submitted additional revisions to its conditionally approved program (Administrative Record No. WV 492). The modifications included: statutory amendments to the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA) to satisfy conditions at 30 CFR 948.11 (a) (4), (5), (27), (28), (29), (31), (32), and (33) regarding the definitions of adequate treatment and disturbed area, mandatory civil penalties, abatement of cessation orders, measures to be taken to abate a violation when a cessation order has been issued, prohibition of mining in areas declared unsuitable for mining by Congress, appellant costs and conflict of interest; resolution of condition (34) regarding small operator assistance funding due to Federal regulatory reform; resolution of conditions (8), (11), and (16) pertaining to coal refuse areas, time requirement for backfilling and grading and transfer of wells due to proposed Federal regulatory reform; resolution of conditions (2), (3), (9), (18), (19), (21), (23), and (30) concerning excess spoil, prohibition of gravity discharge of water from a mine, variance for alternative land use, valley fills, previous record of mining by permit applicants, public notification of permit decisions, map and narrative of coal prospecting area and show cause orders due to State regulatory revisions, which are still under review by OSM (48 FR 9308–9309); and request for reconsideration by OSM of conditions (1), (13), (20), and (24) regarding auger mining of preexisting highwalls, windrowing of timber on the downslope, incidental mining permits and operator liability during citizen inspections. Also, West Virginia requested an additional sixty days to satisfy conditions (7), (14), and (26) concerning maximization of mineral recovery during auger mining, peak particle velocity and a civil penalty system and conditions (2), (3), (9), (18), (19), (21), (23), and (30), as previously discussed. Additional time was needed by the State to draft regulations due to recent statutory amendments and to finalize the revisions to its proposed regulations prior to promulgating them under emergency provisions.

On May 19, 1983, OSM announced receipt of the proposed amendment and scheduled a public hearing and comment period on the proposed modifications to the State's program (48 FR 22586–22587). The hearing was subsequently cancelled since no one expressed an interest in presenting testimony at the hearing. The comment period closed June 20, 1983 (48 FR 24393).

Based on OSM's review of the February 16th amendment and public comments received during the comment period, OSM provided the State with a list of deficiencies found in the amendment (Administrative Record No. WV 500). On June 3, 1983, OSM and State officials met and discussed the deficiencies of the February 16th amendment. On June 15, 1983, West Virginia submitted revisions to its proposed regulations which were intended to satisfy the deficiencies identified in its February 16th amendment (Administrative Record No. WV 498).

On June 22, 1982, OSM reopened the comment period to allow the public sufficient time to consider and comment on revisions made to the proposed regulations of February 16, 1983. Also, inasmuch as the revisions to the proposed regulations may have affected the statutory modifications submitted by the State on April 29, 1983, OSM extended the public comment period announced on May 19, 1983. The comment period on all of the proposed amendments to the West Virginia program closed on July 7, 1983 (48 FR 28480–28481).

On September 8, 1983, OSM and State officials met to discuss the results of OSM's preliminary review of the program amendments and the public comments received thereon (Administrative Record No. WV 522). As a result of this meeting, on September 13, 1983, West Virginia submitted modifications to its June 15th regulations (Administrative Record No. WV 523). Pursuant to the State's resubmission letter of September 9, 1983, except for modifications regarding applicability, the inclusion of new bond release procedures for interim program permits and the deletion of incidental mining requirements at Section 9 of its regulations, the September 13, 1983, amendment contained regulations that were not significantly different from the proposed regulations submitted by the State on June 15, 1983. Also, a detailed listing of minor modifications made by the State to correct typographical mistakes, punctuation errors, etc., was submitted as part of the program amendment to assist the public in its review of the revised regulations.

On September 21, 1983, OSM announced receipt of the proposed amendment and reopened the comment period to allow the public sufficient time to comment on the revisions submitted by West Virginia on September 13, 1983, to its proposed regulations initially submitted on February 16, 1983, and revised on June 15, 1983, and the minutes of the meeting held on September 8, 1983, between OSM and the State. In addition, OSM extended the comment period announced on May 19, 1983, with regard to the statutory modifications submitted by the State on April 27, 1983. Hence, the comment period on all of the proposed amendments to the West Virginia program closed on October 6, 1983 (48 FR 43053–43054).

Secretary's Findings

Set forth below, pursuant to 30 CFR 732.15 and 732.17, are the Secretary's findings concerning those program modifications submitted by West Virginia which satisfy existing program conditions.

1. As discussed in Finding 13.4 of the January 21, 1981 **Federal Register** notice, Section 20–6–13(b)(25) of WV SCMRA was found not to be in accordance with section 515(b)(25) of SMCRA. State law allowed the use of constructed outcrop barriers to prevent slides and erosion, while Federal law required retention of a natural barrier. Although the Secretary agreed that the State's alternative for a constructed outcrop barrier could be more stringent than its Federal counterpart, the State submission did not contain specific criteria for the design of constructed outcrop barriers that would ensure that their performance in preventing slides and erosion would be more effective than that of a natural barrier. The Secretary conditioned his approval by requiring that the State provide criteria for the design of constructed barriers which would assure protection of water quality

and long term stability at least equal to that of natural barriers. West Virginia amended Section 6B.07(a)(4) of its regulations to require that the backfill be sufficiently compacted and stabilized to ensure that a static safety factor of 1.3 would be attained. West Virginia stated in its resubmission letter of April 27, 1983, that they interpret this amendment to require that constructed barriers would also have to be sufficiently compacted and stabilized to ensure a static safety factor of 1.3. Therefore, the Secretary finds that the amendment is in accordance with section 515(b)(25) of SMCRA, and the adoption of the amendment by the State satifies conditon (2) of his approval of the State's program.

2. As discussed in Finding 13.10 of the January 21, 1981 **Federal Register** notice, the Secretary found Section 20–6–14(b)(12) of WV SCMRA not to be in accordance with section 516(b)(12) of SMCRA, and Sections 7B.05 and 7D of the West Virginia regulations were found inconsistent with the Federal requirements regarding gravity discharge. Section 516(b)(12) of SMCRA prohibits gravity discharge of water from all new drift mines working acid-producing or iron-producting-coal seams. State law allowed gravity discharge from new drift mines if health and safety factors overrode environmental concerns and the discharge did not violate Federal and State effluent limitations and water quality standards. West Virginia amended its regulations at Section 7B.05 and deleted Section 7D to prohibit gravity discharge from all new drift mines located in acid or iron producing coal seams. Therefore, the Secretary finds that revised Section 7B.05 of the State's regulations is no less effective than the Federal requirements concerning gravity discharge. Also, the adoption of the amendment satisfies condition (3) of the Secretary's approval of the State's program.

3. As discussed in Finding 13.12 of the January 21, 1981 **Federal Register** notice, the State's definition of "adequate treatment" in Section 20–6–3(a) of WV SCMRA was found not to be in accordance with the provisions of section 515(b)(10) of SMCRA. Adequate treatment was defined by the State to mean that treated water could not lower the water quality standards established for the body of water concerned. This definition was found by the Secretary to be unclear because lowering of water quality standards is an administrative process and not a function of a mining operation. West Virginia amended its definition of "adequate treatment" to mean that treated water would not violate effluent limitations or cause a violation of water quality standards. The State's amended statutory provision is in accordance with section 515(b)(10) of SMCRA, and the adoption of the amendment by West Virginia satisfies condition (4) of the Secretary's approval of the West Virginia program.

4. As discussed in Finding 13.14 of the January 21, 1981 **Federal Register** notice, the State's definition of "disturbed area" in Section 20–6–3(j) of WV SCMRA was found to be inconsistent with the Federal definition in 30 CFR 701.5. Approval of the State's definition was conditioned upon the inclusion of topsoil storage areas. West Virginia amended its statute at Section 20–6–3(k) to provide for a new definition of "disturbed area" which includes an area from which topsoil has been removed or placed by surface mining operations and reclamation is incomplete. This amendment is no less effective than the provisions of 30 CFR 701.5. Therefore, the Secretary finds that the adoption of this amendment by West Virginia satisfies condition (5) of his approval of the West Virginia program.

5. As discussed in Finding 13.20 of the January 21, 1981 **Federal Register** notice, the Secretary found that Section 20–6–13–(b)(9) of WV SCMRA and Section 6B.07(b) of the State's regulations were inconsistent with section 515(b)(9) of SMCRA and 30 CFR 819.11 (a) and (e). Section 6B.07(b) of the State's regulations did not require that auger mining be conducted to maximize recoverability of mineral resources remaining after mining by providing undisturbed areas for future underground entrances along augered highwalls as required by 30 CFR 819.11(a). Also, neither Section 20–6–13(b)(9) nor Section 6B.07(b)(1) provided for the prohibition of auger mining under certain circumstances, including where a prohibition is necessary to maximize mineral recoverability, as well as where there are environmental problems as required by 30 CFR 819.11(e). Section 20–6–13(b)(9) of WV SCMRA and Section 6B.07(b)(1) of the State's regulations only provided that augering may be prohibited in order to maximize the utilization, recovery or conservation of the mineral and under certain other listed circumstances. West Virginia amended its regulations at Section 6B.07(b)(4) to provide for maximizing mineral resource recovery after auger mining by providing undisturbed areas for future undergound mining. On April 28, 1983, OSM amended its auger mining regulations (48 FR 19314–19322). Although the requirements of 30 CFR 819.11(e) providing for undisturbed areas for future underground mining after auger mining remain basically the same and are now contained in 30 CFR 819.13(c), the requirement of 30 CFR 819.11(e) to make the prohibition of auger mining mandatory when it is necessary to maximize mineral recoverability was amended at 30 CFR 819.11(b) to give the regulatory authority the right to decide when auger mining is to be prohibited. Therefore, the Secretary finds that the provisions of Sections 6B.07(a)(1) and 6B.07(b)(4) are no less effective than the requirements of 30 CFR 819.11(b) and 819.13(c), respectively. The adoption of the amendment by the State satisfies condition (7) of the Secretary's approval of the West Virginia program.

6. As discussed in Finding 13.24 of the January 21, 1981 **Federal Register** notice, Section 6B.07(e)(1) of the State's regulations was found to be inconsistent with 30 CFR 824.11 and 826.15, and the State provisions were found not to be in accordance with section 515(e) of SMCRA. The State regulations allowed broad variances for special land use purposes at the Director's discretion with no regulatory criteria for his exercising this discretion. West Virginia amended Section 6B.07(e) to provide for a variance from the requirement to restore affected areas to approximate original contour if the requirements contained in that section are satisfied. The Secretary finds that since the revised State provisions contain criteria for use of the variance provided for in the State's regulations, Section 6B.07(e) is no less effective than 30 CFR 785.16, 824.11 and 826.15 and is in accordance with section 515(e) of SMCRA. The adoption of the amendment satisfies condition (9) of the Secretary's approval of the West Virginia program.

7. As discussed in Finding 13.27 of the January 21, 1981 **Federal Register** notice, Section 6B.09(b)(4) of the State's regulations was found to be inconsistent with 30 CFR 816.101(a)(3). Section 6B.09(b)(4), now cited as Section 6B.09(a)(4), did not provide that area mining operations must complete rough backfilling and grading operations within 180 days of coal removal as required by 30 CFR 816.101(a)(3). OSM amended its backfilling and grading regulations on May 24, 1983 (48 FR 23356–23371). The new Federal rules at 30 CFR 816.102 omit specific timing and distance requirements for backfilling and grading operations and provide technical standards for those operations. Also, a new requirement was added at 30 CFR 816.100 on June 1, 1983 (48 FR 24638–24652), to require that reclamation

must occur as contemporaneously as practicable with the mining operation in accordance with a schedule established by the regulatory authority that defines contemporaneous reclamation. Since 30 CFR 816.102 does not contain a specific time requirement for backfilling and grading area mining operations and the State's regulations ensure that reclamation will be contemporaneous with the mining operation as provided by 30 CFR 816.100, the Secretary finds that Section 6B.09(a)(4) of the State's regulations, as amended, is no less effective than the Federal provisions. Therefore, the State has satisfied condition (11) of the Secretary's approval of West Virginia's permanent program.

8. As discussed in Finding 13.29 of the January 21, 1981 **Federal Register** notice, the Secretary found the provisions of Section 6B.07(a)(2) to be inconsistent with the requirements of 30 CFR 826.12(a)(i)(C) and section 515(d)(1) of SMCRA. The State's regulations allowed the Director of the Department of Natural Resources (DNR) to permit windrowing timber on the downslope where the permittee made certain showings. Section 515(d)(1) of SMCRA and 30 CFR 826.12(a)(i)(C) prohibit placing or leaving debris on the downslope in areas of steep slope mining. West Virginia amended its regulations at Sections 6B.07(a)(2), 7B.08(a)(2) and 8B.08(a)(2) by deleting the provisions for windrowing timber on the downslope. State law now provides that spoil and debris can not be placed on the downslope. Therefore, the Secretary finds that Sections 6B.07(a)(2), 7B.08(a)(2) and 8B.08(a)(2) are no less effective than 30 CFR 826.12(a)(i)(C) and in accordance with section 515(d)(1) of SMCRA. Also, the adoption of the amendment by the State satisfies condition (13) of his approval of the West Virginia program.

9. As discussed in Finding 13.34 of the January 21, 1981 **Federal Register** notice, Section 6B.08(c) of the State's regulations, Chapter 8 of the Technical Handbook and Section 20–6–13 of WV SCMRA were found by the Secretary to be inconsistent with 30 CFR 816.72, 816.73, 817.72 and 817.73. State law allowed valley and head of hollow fills to have central rock core drains, without the requirement for diversion of water away from the valley fill as provided by 30 CFR 816.72 and 817.72. Also, West Virginia did not limit head of hollow fills to a maximum of 250,000 cubic yards, if not constructed to the ridge line as required by 30 CFR 816.73(a). The Secretary was concerned about the potential impacts of substantial flows of water onto or over the fill from areas above the fills. The Secretary's approval was conditioned on the State providing additional data demonstrating that large volumes of water runoff will not damage head of hollow and valley fills along with any regulatory or programmatic changes, if any, necessary to correct the deficiencies identified by the data provided. West Virginia amended its regulations at Section 6B.08(b)(1)(D) to provide that a rock core chimney drain may be utilized for fills that will come to the ridge line with no natural drainage area above the fill. Also, a rock core chimney drain may be used for fills that do not come to the ridge line provided that the fill does not contain more than 250,000 cubic yards of material, unless located in an area where the valley floor is always above the local water table. If a rock core chimney drain is not used, an underdrain and surface diversion system will be required for the fill. The proposed requirement will limit the amount of drainage onto or over fills utilizing rock core chimney drains by restricting the drainage area above the fills. Fills, which are constructed to the approximate elevation of the adjacent ridge line, can not have a natural drainage area above the fill. Furthermore, fills containing more than 250,000 cubic yards of material must always be constructed to the ridge line or be located in an area where the valley floor is above the local water table. Otherwise, an underdrain and surface diversion system must be utilized. These provisions will ensure the stability of fills which utilize rock core drainage systems because there will be no significant runoff from the area above the fill. Therefore, the Secretary finds that the revised State provisions are no less effective than 30 CFR 816.72, 816.73, 817.72, and 817.73. Also, the adoption of Section 6B.08(b)(1)(D) by the State satisfies condition (18) of the Secretary's approval of the West Virginia program.

10(a). As discussed in Finding 14.1 of the January 21, 1981 **Federal Register** notice, Section 20–6–10(a)(3) of WV SCMRA was found not to be in accordance with section 507(b)(3) of SMCRA. Section 20–6–10(a)(3) did not require that the applicant submit with the permit application a statement of current or previous surface coal mining permits or pending applications for such permits held by the applicant in the United States as required by section 507(b)(3) of SMCRA. State law only required a statement of any current surface mining permit or pending application held by the applicant in the State. West Virginia amended its regulations at Section 3F.01 to require that the applicant list any current or previous permits or pending applications held by the applicant in the United States. Although the State's regulations do not specify that the applicant must submit a listing of all such permits held subsequent to 1970, West Virginia has indicated that, by not including this language in its regulations, the State could require a listing of all current or previous permits and pending applications ever held by the applicant, not just those held subsequent to 1970 (Administrative Record No. WV 522). Since West Virginia will require the applicant to list current or previous permits and pending applications held subsequent to 1970, the Secretary finds that Section 3F.01 is no less effective than 30 CFR 778.13(d), and Section 20–6–10(a)(3) of WV SCMRA is in accordance with section 507(b)(3) of SMCRA.

(b) As discussed in Finding 14.2 of the January 21, 1981 **Federal Register** notice, the Secretary found that Section 20–6–10(a)(5) of WV SCMRA was not in accordance with section 507(b)(5) of SMCRA. Section 507(b)(5) of SMCRA requires that a permit applicant submit a statement of suspended or revoked mining permits for the previous five year period. Section 20–6–10(a)(5) limited this requirement to "permanently" suspended permits which are, in effect, revoked permits. West Virginia informed OSM that both State law and regulations in existence prior to the enactment of SMCRA and existing State law and regulations do not contain provisions that allow for the suspension of permits as provided for in section 507(b)(5) of SMCRA. According to West Virginia, Section 20–6–10(a)(5) only gives it the authority to revoke permits (Administrative Record No. WV 522). In that Section 20–6–10(a)(5) of WV SCMRA requires the applicant to submit a statement of revoked permits with the permit application, the Secretary finds that Section 20–6–10(a)(5) of WV SCMRA is in accordance with section 506(b)(5) of SMCRA.

In summary, except as discussed in Finding 25, the Secretary finds that the adoption of the aforementioned amendments by West Virginia satisfies condition (19) of his approval of the State's program regarding permit application information.

11. As discussed in Finding 14.8 of the January 21, 1981 **Federal Register** notice, West Virginia's regulations were found to be inconsistent with 30 CFR 786.23(e). The State's regulations did not contain provisions for public notification by the regulatory authority of approval, modification or denial of a permit

application as required by 30 CFR 786.23(e). West Virginia amended its regulations at Section 30.05 to require that the Director upon issuance of a permit notify the person who files comments or objections on the permit application, each party to the informal conference and appropriate local agencies, including the clerk of the county commission in the area of the land to be affected. In addition, the Director must publish in a newspaper of general circulation at least monthly a listing of all permits issued in the area. According to a memorandum of understanding between OSM and West Virginia, the regulatory authority also provides the local OSM field office copies of permits issued. These requirements are no less effective than those of 30 CFR 786.23(e) which require that the regulatory authority must provide a copy of its written findings concerning permit approval, modification and denial to each person who filed written objections and comments and to the local OSM office and publish a summary of its decision in a newspaper of general circulation in the area of the coal mining operation. Therefore, the Secretary finds that the adoption of the amendment by the State satisfies condition (21) of his approval of the West Virginia program.

12. As discussed in Finding 15.2 of the January 21, 1981 **Federal Register** notice, Section 20-6-8(b)(1) of WV SCMRA and Section 5A.01(b)(12) of the State's regulations were found to be inconsistent with 30 CFR 776.12. Specifically, West Virginia's coal exploration program did not require a narrative description of surface topography, geology, surface water and other physical features, vegetative cover, and the distribution and important habitats of fish and wildlife as required by 30 CFR 776.12(a)(3)(i); nor did it require a map, as required by 30 CFR 776.12(a)(5), identifying proposed trenches, roads, structures, land excavations, water and coal exploratory holes, wells and earth and debris disposal areas, historic, cultural and drainage features and habitats of any threatened or endangered species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). West Virginia amended its regulations at Section 5A.02(c) to provide for the map as required by 30 CFR 776.12(a)(5) and at Sections 5A.01 and 5A.02 to provide for the narrative as required by 30 CFR 776.12(a)(3)(i). Therefore, the Secretary finds that the State requirements, except as discussed in Finding 31 herein, are no less effective than the Federal provisions, and condition (23) of his approval of the West Virginia program has been satisfied.

13. As discussed in Finding 19 of the January 21, 1981 **Federal Register** notice, the Secretary found several inadequacies in the State's proposal for assessing, adjudicating and collecting civil penalties.

(a) As discussed in Finding 19.1, the Secretary conditioned the approval of the State's procedures for proposing civil penalties on the adoption of regulations, or other program amendments which would provide guidance to inspectors and magistrates for applying the general criteria of Section 20-6-17(c) of WV SCMRA. West Virginia amended Section 14B.02 of its regulations to provide a system for determining the civil penalty amounts to be assessed based on the criteria set forth in Section 20-6-17(c) of WV SCMRA and Section 14B.02(c) of its regulations. Therefore, the Secretary finds that Section 14B.02 of West Virginia's regulations is the same or similar to 30 CFR Part 845 and is in accordance with section 518 of SMCRA.

Section 20-6-17(d) of WV SCMRA was found not to be in accordance with section 518 of SMCRA. West Virginia proposed to use the magistrate court for the assessment of civil penalties. West Virginia amended its law at Section 20-6-17(d) to provide for an administrative assessment of civil penalties. All provisions in Section 20-6-17(d) of WV SCMRA which gave the magistrate court the authority to impose and collect civil penalties were deleted. Therefore, the Secretary finds that Section 20-6-17(d) of WV SCMRA is in accordance with Section 518 of SMCRA in regard to assessing civil penalties.

Section 20-6-17(d) of WV SCMRA was found not to be in accordance with section 518(c) of SMCRA for not requiring the prepayment of a proposed civil penalty. Since West Virginia amended Sections 20-6-17(d)(1) and 17(d)(2) to require that an operator must place the amount of a proposed civil penalty in escrow if the operator wishes to contest either the fact of the violation or the amount of the penalty, the Secretary finds that the State law provisions, as amended, are in accordance with the requirements of section 518(c) of SMCRA.

Also, the Secretary found that Section 20-6-17(d) of WV SCMRA did not provide citizens full access to the magistrate court, including intervention and recovery of attorney fees as required by section 518 of SMCRA, and unlike section 518 of SMCRA, provided that jury trials are available in civil penalty proceedings. Since West Virginia amended its law at Section 20-6-17(d) to no longer provide for a magistrate or judicial system of assessing civil penalties, the Secretary finds that the administrative system established by Section 20-6-17(d) of WV SCMRA provides citizens full access to the proceedings and ensures that jury trials will not be available in civil penalty proceedings and is therefore similar to the procedures at section 518 of SMCRA.

(b) As discussed in Findings 19.2 and 27.4 of the January 21, 1981 **Federal Register** notice, Section 50-5-12 of the West Virginia Code was found not to be in accordance with section 525 of SMCRA. State law provided that after judgment in the magistrate court, any party could appeal to the circuit court of the appropriate county and such appeals would be de novo. Since West Virginia amended its surface mining law to eliminate de novo review of magistrate decisions, the Secretary finds that Section 20-6-17(d) of SMCRA is in accordance with section 525 of SMCRA.

(c) As discussed in Finding 19.3 of the January 21, 1981 **Federal Register** notice, the Secretary found that Section 20-6-17(a) of WV SCMRA was inconsistent with section 518(h) of SMCRA. State law provided that mandatory daily civil penalties for cessation orders terminate once corrective steps were "initiated" to the satisfaction of the inspector. Section 518(h) of the SMCRA, however, provides that the civil penalty shall be imposed for each day the violation continues unabated. West Virginia amended its law at Section 20-6-17(a) to provide that mandatory daily civil penalties for cessation orders shall remain in effect until the Director determines that the violation has been abated or until modified, vacated, or terminated by the Director or by a court. Therefore, the Secretary finds that Section 20-6-17(a) of WV SCMRA, as amended, is no less stringent than the penalty procedures at section 518(h) of SMCRA.

(d) As discussed in Findings 19.4 and 27.4 of the January 21, 1981 **Federal Register** notice, the Secretary found that Sections 20-6-17(d) and 20-6-24(a) of WV SCMRA were inconsistent with section 518(b) of SMCRA. These sections of the State's surface mining law provided an operator with two independent avenues for appealing notices or orders, which could result in unequal enforcement and two separate appeals being taken with differing results. Since West Virginia amended its law at Section 20-6-17(d) to eliminate the provisions which provided that civil penalties could be assessed and collected by the magistrate court,

Section 14.1(b) of the Rules of Civil Procedure for the Magistrate Court of West Virginia which provided for appeals no longer applies. State law now only provides for appeal of a notice or order to the Reclamation Board of Review or appropriate circuit court as the case may be. Therefore, the Secretary finds that Sections 20–6–17(d) and 20–6–24(a) of WV SCMRA are the same or similar to section 518(b) of SMCRA.

In summary, the Secretary finds that Section 20–6–17(d) of WV SCMRA and Section 14B.02 of the State's regulations, as amended, provide for a system for assessment, enforcement and collection of civil penalties as required by section 518 and the related provisions of sections 525 and 526 of SMCRA. Therefore, the adoption of the amendments by the State satisfies condition (26) of the Secretary's approval of West Virginia's permanent program.

14. As discussed in Finding 20.4 of the January 21, 1981 **Federal Register** notice Section 20–6–17(a) of WV SCMRA was found not to be in accordance with section 518(h) of SMCRA. State law did not require that daily civil penalties for cessation orders issued for failure to abate a notice of violation be imposed until the violation is abated. Section 20–6–17(a) of WV SCMRA provided for a mandatory daily civil penalty only until corrective steps were initiated. West Virginia amended Section 20–6–17(a) to provide that a cessation order shall remain in effect until the Director determines that the violation has been abated or until modified, vacated or terminated by the Director or by a court as required by section 518(h) of SMCRA. Adoption of this amendment by West Virginia satisfies condition (27) of Secretary's approval of the State's program.

15. As discussed in Finding 20.7 of the January 21, 1981 **Federal Register** notice, Section 20–6–16(c) of WV SCMRA was found not to be in accordance with section 521 of SMCRA. State law provided that cessation orders shall be "vacated" once remedial action has been accomplished. This is contrary to section 521 of SMCRA because to vacate would mean that the cessation order was not valid. Consequently, a civil penalty could not be assessed. West Virginia amended Section 20–6–16(c) to require the "termination" of a cessation order upon abatement of the violation. Therefore, the Secretary finds that the State's statutory provision, as amended, is no less stringent than section 521 of SMCRA and satisfies condition (28) of his approval of the State's program.

16. As discussed in Finding 20.8 of the January 21, 1981 **Federal Register** notice, the Secretary found Section 20–6–17(a) of WV SCMRA not to be in accordance with section 521(a)(3) of SMCRA. State law did not require a determination as to the steps necessary to abate the violation in the most expeditious manner possible, and the inclusion of the necessary measures in the cessation order. West Virginia amended Section 20–6–17(a) to provide that in any cessation order issued under this subsection, the Director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order. The amended statutory provision is the same or similar to the provisions of section 521(a)(3) of SMCRA. The adoption of this amendment by the State satisfies condition (9) of the Secretary's approval of West Virginia's program.

17. As discussed in Finding 20.9 of the January 21, 1981 **Federal Register** notice, Section 14A.01 of West Virginia's regulations was found to be inconsistent with 30 CFR 843.13. State law did not provide that an operator's unwarranted failure to abate a violation is to be considered in determining whether an operator should be issued an order to show cause why his permit should not be suspended or revoked. Also, the word "no" appeared in Section 14A.01(a)(3) which negated the meaning of the show cause requirement. The State amended its regulations at Section 14A.03(a)(1) to provide that an operator's unwarranted failure to abate will be considered in determining whether a show cause order should be issued. Also, Section 14A.03(a)(3) was amended to delete the word "no." Therefore, the Secretary finds that the provisions of Section 14A.03 are no less stringent than the requirements of 30 CFR 843.13. Also, the adoption of the amendment by the State satisfies condition (30) of the Secretary's approval of the State's program.

18. As discussed in Finding 21.1 of the January 21, 1981 **Federal Register** notice, Section 20–6–22(d)(1) of WV SCMRA was found not to be in accordance with section 522(e)(1) of SMCRA. State law provided for the issuance of variances to allow mining within the boundaries of National Parks, the National Wildlife Refuge System, etc., where mining is prohibited by Federal law. West Virginia amended Section 20–6–22(d)(1) by deleting the language which provided for the issuance of variances. Therefore, the Secretary finds that Section 20–6–22(d)(1) of WV SCMRA is in accordance with section 522(e)(1) of SMCRA. Also, the adoption of the amendment satisfies condition (31) of the Secretary's approval of the West Virginia permanent program.

19. As discussed in Finding 22.3 of the January 21, 1981 **Federal Register** notice, the Secretary found that Sections 20–6–24(f) and 25(c) of WV SCMRA were inconsistent with 43 CFR Part 4. Section 20–6–24(f) provided that, with respect to appeals to the Reclamation Board of Review, all fees and mileage expenses incurred and the expense of preparing the record at the request of the appellant would have to be paid by the appellant. Section 25(c) also required the appellant to bear the cost of preparing and transcribing the record. West Virginia amended Sections 20–6–24(f) and 25(c) to provide that the appellant be required to pay only the cost of preparing a copy of the record. The Secretary finds that the statutory provisions, as amended, are consistent with 43 CFR Part 4 in that the appellant does not have to bear the cost of transcribing proceedings nor pay the mileage or transportation expenses incurred by other parties. The adoption of the amendment satisfies condition (32) of the Secretary's approval of the West Virginia program.

20. As discussed in Finding 23 of the January 21, 1981 **Federal Register** notice, the provisions of Section 20–6–40(a) of WV SCMRA were found not to be in accordance with the requirements of section 517(g) of SMCRA. State law did not subject all members of the Reclamation Commission to the provisions of Section 20–6–40. West Virginia amended its law to require that no member of the Reclamation Commission could have a direct or indirect financial interest in any surface mining operation. Therefore, the Secretary finds that the provisions of Section 20–6–40(a) are in accordance with the requirements of section 517(g) of SMCRA. Also, the adoption of the amendment by the State satisfies condition (33) of the Secretary's approval of the West Virginia program.

21. As discussed in Finding 25 of the January 21, 1981 **Federal Register** notice, Section 20–6–10(b) of WV SCMRA was found not to be in accordance with section 507(c) of SMCRA. State law provided that costs associated with the small operator assistance program would be assumed by the Department of Natural Resources from funds provided by the Federal government. Since this provision had the effect of limiting funding for the small operator assistance program to Federal funds, the Secretary conditionally approved this portion of

the State's program. On January 18, 1983, OSM revised its regulations governing small operator assistance (48 FR 2266–2274). Specifically, a new 30 CFR 795.9(a) provides that to the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement referenced in section 507(c) of SMCRA for eligible operators who request assistance. In other words, the regulatory authority is not required by OSM to provide funds for the purpose of 30 CFR 795.9(a) beyond those funds authorized by section 401(b)(1) of SMCRA and appropriated by Congress. Therefore, the Secretary finds that the provisions of Section 20–6–10(b) of WV SCMRA are in accordance with the requirements of section 507(c) of SMCRA, and condition (34) of his approval of the West Virginia program has been satisfied.

Set forth below are the Secretary's findings, pursuant to 30 CFR 732.15 and 732.17, concerning those program modifications submitted by West Virginia that do not satisfy existing program conditions or result in additional conditions.

22. As discussed in Finding 13.1 of the January 21, 1981 **Federal Register** notice, Section 6B.09(f)[3] of the State's regulations was found to be inconsistent with 30 CFR 816.102(a)(2) and section 515(b)(3) of SMCRA. West Virginia requested that OSM reconsider this issue on the basis of a policy letter from OSM to the Commonwealth of Kentucky. The letter, dated September 3, 1981, clarifies OSM's position concerning the responsibility for the elimination of preexisting highwalls where the operator proposes to conduct auger mining operations on previously mined lands. The letter stated that where a proposed mining operation will encounter a preexisting highwall the operator should include a showing in the permit application that the operation will either completely eliminate the highwall or that it is not expected to have an "adverse physical impact" on the highwall. OSM maintains that the operator should be required to include geotechnical information in the permit application that shows whether his operation is likely to weaken the structure of the highwall remnant such that an "adverse physical impact" of the highwall is reasonably foreseeable. If the proposed mining will have an adverse physical impact on the preexisting highwall, the operator is required to completely eliminate the highwall. West Virginia also amended Section 6B.09(f)(3) of its regulations. Section 6B.09(f)(3), now cited as 6B.09(d)(2), provides that auger operations proposing to auger areas and not substantially reaffecting the preexisting highwall shall, at a minimum, properly seal all auger holes and backfill to eliminate the highwall to the maximum extent technically practical using all reasonable available spoil to achieve a minimum depth of four feet (4') over the coal seam and a static safety factor of 1.3 with non-toxic material capable of supporting vegetation. These provisions correspond to the remining requirements for auger mining adopted by OSM on April 26, 1983 (48 FR 19314–19322). However, the State's rules, unlike 30 CFR 819.19(b), do not require that: (1) The applicant must demonstrate in writing to the regulatory authority that the volume of all reasonably available spoil is insufficient to eliminate the highwall; (2) any remnants of the highwall remaining after the highwall has been reclaimed to the maximum extent technically practical shall be stable and not pose a hazard to the public health and safety or the environment; and (3) spoil placed or the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment. Also, West Virginia should define the term "substantially reaffect" in order to ensure that the State's definition is no less effective than the Federal definition of "adverse physical impact" at 30 CFR 701.5, as amended on September 16, 1983 (48 FR 41720–41735). Therefore, the Secretary finds that the provisions of condition (1) of his approval of January 21, 1981, which require the promulgation of regulations to require "complete" highwall elimination in all augering operations no longer apply due to the promulgation of Federal regulations at 30 CFR 819.19(b) which require the elimination of preexisting highwalls following augering to the maximum extent technically practical. Also, the Secretary finds that Section 6B.09(d)(2), as amended, is less effective than 30 CFR 816.19(b) as previously discussed, and condition (1) must be amended to reflect this deficiency. Accordingly, the approval of West Virginia's program is conditioned upon the inclusion of language in its regulations or other program amendment to provide for augering on previously mined areas which is no less effective than 30 CFR 819.19(b) and in accordance with sections 102 and 515 of SMCRA.

23. As discussed in Finding 13.30 of the January 21, 1981 **Federal Register** notice, Section 4C.04(g) of the State's regulations was found to be inconsistent with 30 CFR 816.65. Section 4C.04(g) allowed a maximum peak particle velocity of two inches per second which could not be exceeded at the nearest residence, building or structure, whereas 30 CFR 816.65(i) required that a maximum peak particle velocity of one inch per second could not be exceeded at the location of any dwelling, public building, etc. On March 8, 1983, OSM amended its blasting regulations (48 FR 9788–9811). The Federal regulations at 30 CFR 816.67(d)(2) now require that the maximum peak particle velocity not exceed 1.25 inches per second at the location of any dwelling, public building, school, church or community or institutional building outside the permit area and at a distance of up to 300 feet from the blasting site; 1.0 inch per second from 301 feet to 5,000 feet; and 0.75 inch from 5,001 feet and beyond. West Virginia amended its regulations at Section 4C.05(h) to require that the peak particle velocity in inches per second not exceed the following values at the nearest protected structure: 1.25 if the nearest structure is within 300 feet, 1.0 if the nearest structure is between 300 and 5,000 feet, and 0.75 if the nearest structure is greater than 5,000 feet from the blast site. The Secretary finds that the State's maximum limits on peak particle velocity are no less effective than those of 30 CFR 816.67(d)(2). However, Section 4C.05(h) of the State's regulations provides that the peak particle velocity shall not be exceeded at the "nearest" protected structure, while 30 CFR 816.67(d)(2) requires that the maximum peak particle velocity shall not be exceeded at the location of "any" dwelling, public building, etc., outside the permit area. Ground motion resulting from a blast, depending on topography, location, etc., might not be in excess at the nearest protected structure but be in excess at a more distant structure in another direction from the blasting site. Also, the State needs to define or otherwise explain what is meant by the term "protected structure" in order to ensure the protection of structures listed in 30 CFR 816.67(d)(2) and 817.67(d)(2). Therefore, the Secretary finds that Section 4C.05(h) of the State's regulations is less effective than 30 CFR 816.67(d)(2) and 817.67(d)(2), and the adoption of the amendment by the State has failed to satisfy a portion of condition (14) of his approval of the West Virginia program.

24. As discussed in Finding 13.32 of the January 21, 1981 **Federal Register** notice, Sections 6B.02, 7B.02 and 8B.02 were found by the Secretary to be inconsistent with 30 CFR 816.53 and

817.53. Unlike the Federal requirements, the State's regulations did not contain criteria for the transfer of exploratory or monitoring wells to third parties. West Virginia amended its regulations at Sections 6B.02, 7B.02 and 8B.02 to specifically provide that wells may be transferred to another party for further use if approved by the Director. However, the amended State provisions do not contain criteria for such transfers. Therefore, the Secretary finds that the State provisions at Sections 6B.02, 7B.02 and 8B.02 are still less effective than the requirements of 30 CFR 816.53 and 817.53, and the adoption of the amendments by the State still fails to satisfy condition (16) of his approval of the West Virginia program.

25. As discussed in Finding 14.3 of the January 21, 1982 **Federal Register** notice, the provisions of Sections 20–6–10(f) and 18(c) were found not to be in accordance with section 510(c) of SMCRA. Section 510(c) of SMCRA requires that the applicant file with his permit application a schedule listing any and all notices of violation pertaining to air or water protection incurred by the applicant in connection with any surface coal mining operation in the United States during the three year period prior to the date of application. Section 20–6–10(f) of WV SCMRA only required a schedule of bond forfeitures, permit revocations, cessation orders or permanent suspension orders. It did not require that other types of notices of violation be reported. Also, Section 20–6–18(c) of WV SCMRA provided that the Director only consider violations of West Virginia laws when making decisions on permit applications. West Virginia amended its regulations at Section 3F.01 to require that the applicant file with his permit application a listing of each violation notice received by the applicant in connection with any surface coal mining operation during the three (3) year period before the application date for violations of any environmental law, rule or regulation of West Virginia, or of any other State if the applicant has not operated within West Virginia in the past three (3) years, and of any regulation enacted pursuant to Federal law pertaining to air or water environmental protection. West Virginia also amended its regulations at Section 3F.02 to require that the Director consider violations of any law, rule or regulation of the United States or any state law, rule or regulation applicable to environmental protection. The Secretary finds that while the West Virginia alternative proposal has merit, section 510(c) is specific in requiring a listing of any and all notices of violations of all state environmental protection laws and regulations during the three year period prior to the date of application.

Section 3F.01 only requires a listing of each violation received by the applicant for any West Virginia environmental protection law or regulation or for any other state if the applicant has not operated in West Virginia for the past three years. Applicants, who have operated in West Virginia for more than three years, would only be required to provide information regarding violations of West Virginia and Federal laws and regulations. Since violations of other state laws and regulations would not be listed by applicants who have operated in the State for more than three years, the Director would not be able to consider this information when making a decision concerning permit issuance as required by Section 3F.02 of the State's regulations. Therefore, the Secretary finds that Section 3F.01 is still not in accordance with section 510(c) of SMCRA and is less effective than 30 CFR 778.14. Also, the adoption of the amendment by the State has failed to satisfy a portion of condition(19) of the Secretary's approval of the West Virginia program.

26. As discussed in Finding 14.4 of the January 21, 1981 **Federal Register** notice, Section 20–6–31 of WV SCMRA and Section 9 of the West Virginia regulations were found to be inconsistent with the Federal requirements. Section 20–6–31 of WV SCMRA and Section 9 of the regulations contained special provisions for surface coal mining incidental to the development of lands of less than five acres for commercial, residential, industrial or civic use. Since section 528(2) of SMCRA exempts operations of less than two acres from all the requirements of SMCRA, the only incidental mining operations required by law to comply with the Federal standards are those operations affecting between two and five acres. In general, the Secretary found that the State's incidental mining provisions regarding permitting, performance standards, and public participation were inadequate. A complete list of deficiencies concerning the State's incidental mining procedures was developed by OSM and submitted to the State (Administrative Record No. WV 500, page 33). As a result of OSM's review, West Virginia deleted Section 9 from its revised regulations submitted on September 13, 1983. Section 9 contained the permit requirements and performance standards for incidental coal mining operations in the State. By not having regulations, Section 20–6–31 of WV SCMRA was invalidated because that section of the law requires the promulgation of performance standards for incidental mining operations. Otherwise, the other sections of the law would become applicable. Since West Virginia's statutory and regulatory requirements have been invalidated, no future incidental mining operations can be permitted in the State. Therefore, the Secretary finds that condition (20) of his approval of the West Virginia program can be removed because the State no longer allows for incidental coal mining over two acres.

27. As discussed in Finding 17 of the January 21, 1981 **Federal Register** notice, Section 20–6–15(g) of WV SCMRA was found not to be in accordance with section 521(a)(1) of SMCRA. Section 521(a)(1) of SMCRA grants authority to citizens to accompany an inspector during an inspection resulting from a citizen's complaint. However, Section 20–6–15(g) of WV SCMRA provided that neither the permittee nor his authorized agents or employees shall be liable for any injury sustained by a citizen accompanying the inspector onto the mine site, except for willful and deliberate acts. The Secretary found that this provision of the State law could act as a constraint on citizens exercising their right to go on the mine site. West Virginia requested that this provision of its law be reconsidered. West Virginia maintains that this provision does not constitute a constraint on any citizen who desires to go on a mine site. Furthermore, without this provision, the State contends that an operator is subjected to a potential liability that may not be covered by his/her insurance, and it could make the State and its inspectors personally liable to citizens under their jurisdiction during inspections. As discussed, section 521(a)(1) of SMCRA gives the citizen the right to accompany the inspector on the inspection. Ordinary tort law principles can be used to determine whether, if a citizen is injured on the site during the inspection, he may hold the operator liable for such injury. Since the State has not amended its law, the Secretary finds that the provisions of Section 20–6–15(g) are still not in accordance with the requirements of section 521(a)(1) of SMCRA, and the State has failed to satisfy condition (24) of his approval of the West Virginia permanent program. The Secretary is, therefore, disapproving the language in Section 20–6–15(g) of WV SCMRA which states, *"Provided,* That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not

be held civilly liable for any injury to such person during the inspection trip." Accordingly, with the disapproval of the provision of Section 20-6-15(g) of WV SCMRA that is not in accordance with section 521(a) of SMCRA, the Secretary is removing condition (24) of his approval of the West Virginia program. Also, by separate notice in today's Federal Register, the Secretary is proposing pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a) to preempt and supersede the provision of Section 20-6-15(g) that is not in accordance with section 521(a)(1) of SMCRA.

28. As discussed in the May 11, 1982 Federal Register notice (47 FR 20122), West Virginia's coal refuse regulations, as amended, were found to be inconsistent with several Federal coal refuse requirements. Specifically, the State provisions did not require: (a) Compliance with permanent program regulations, rather than interim program regulations; (b) approval of the Mine Safety and Health Administration to direct surface runoff or slurry into an underground mine; (c) stability standards even if site conditions indicate that failure would not occur; and (d)(i) covering of coal mining waste banks with non-toxic and non-combustible material as required by 30 CFR 816.85(d) and 817.85(d), (ii) specific construction criteria for subdrainage systems as required by 30 CFR 816.72 (b)(1) and (b)(4), (iii) the prohibition of the use of impoundments on constructed fills as required by 30 CFR 816.71(g), and (iv) the inspection of coal refuse piles as required by 30 CFR 816.71(j). As set forth in the Federal Register notice of September 10, 1982, (47 FR 39821-39822) the Secretary approved an amendment to West Virginia's coal refuse regulations which resolved the deficiency concerning water quality [condition (8) (iii)]. Now West Virginia maintains in its resubmission letter of April 27, 1983, (Administrative Record No. WV 492) that the remaining deficiencies of its coal refuse regulations are resolved due to the proposed Federal regulatory reform of January 3, 1983 (48 FR 2521-2522).

(a) As discussed in the May 11, 1982 Federal Register notice, several sections of the State's coal refuse regulations were found to be inconsistent with the Federal requirements due to the fact that references were made to the State's interim regulations. Since the State has not amended its coal refuse regulations, Sections D.05(a)(1), D.06(b)(1)(f), E.03(b)(1), E.07 and E.09(b)(5) still require compliance with various provisions of the State's interim regulations which have expired. The Secretary finds that since the State is now implementing the permanent program, all references must address applicable requirements of the State's permanent program regulations.

(b) The Secretary found that Section D.05(d)(2)(c) of the State's coal refuse regulations was inconsistent with 30 CFR 816.88. Section D.05(d)(2)(c) required approval of the Director of DNR to divert runoff or slurry into an underground mine. The Federal regulations at 30 CFR 816.88, however, also require the approval of the Mine Safety and Health Administration (MSHA). A closer review of the State's regulations reveals that West Virginia does require MSHA approval to divert slurry or runoff into an underground mine at Section D.05(i). West Virginia's coal refuse regulations at Section D.05(d)(2)(C) simply provide an incorrect reference to Section D.05(i)(9). Since West Virginia's regulations provide for MSHA approval and the State has agreed to correct the typographical error the next time it amends its regulations, the Secretary finds that Section D.05(d)(2)(C) of the State's regulations is no less effective than 30 CFR 816.88, and condition (8)(i) of his approval of the West Virginia program has been satisfied.

(c) Section D.05(f) of the coal refuse regulations was found to be inconsistent with the Federal regulations. Section D.05(f) allowed the DNR Director to waive the stability requirements if site conditions indicate that failure will not occur. No provision is made in the Federal regulations for a waiver of the basic stability requirements. Since West Virginia has not amended Section D.05(f) to eliminate the waiver for the stability requirements included in that section, the Secretary finds that Section D.05(f) is still less effective than the Federal requirements at 30 CFR 816.85.

(d)(i) Section D.07(f) of the State's coal refuse regulation was found to be inconsistent with 30 CFR 816.85(d) and 817.85(d). Section D.07(f) only required a minimum cover of three feet of coarse refuse on coal refuse disposal areas prior to final soil covering, unless otherwise approved by the Director. The Federal regulation at 30 CFR 816.85(d) and 817.85(d), however, require that coal refuse shall be covered with four feet of non-toxic and non-combustible material, unless a lesser amount of cover material is allowed by the regulatory authority based on physical and chemical analyses. Therefore, the Secretary finds that Section D.07(f) is still less effective than 30 CFR 816.85(d) and 817.85(d).

(d)(ii) Section D.05(e) of the State's coal refuse regulations was found to be inconsistent with 30 CFR 816.72 (b)(1) and (b)(4). Section D.05(e) did not specify that underdrains must be constructed of nondegradable, non-acid or non-toxic forming rock such as gravel, limestone, sandstone, or other durable rock that will not slake in water and will be free of coal, clay or shale as required by 30 CFR 816.72 (b)(1) and (b)(4). Therefore, the Secretary finds that Section D.05(e) of the State's regulations is still less effective than 30 CFR 816.72 (b)(1) and (b)(4).

(d)(iii) Section E.08(c)(3) of the State's coal refuse regulations was found to be inconsistent with 30 CFR 816.71(g). The State's regulations did not prohibit the use of impoundments on constructed fills as required by 30 CFR 816.71(g). Section E.08(c)(3) still provides that the Director can authorize the impoundment of water on fills. Therefore, the Secretary finds that Section E.08(c)(3) of the State's coal refuse regulations is still less effective than 30 CFR 816.71(g).

(d)(iv) The Secretary found that Section E.08 of the State's regulations was inconsistent with 30 CFR 816.71(j). Section E.08(d) did not require inspection of coal refuse areas as required by 30 CFR 816.71(j). A closer review reveals that the provisions for the inspection of coal refuse areas are contained in 30 CFR 816.82. Therefore, the Secretary finds that Section E.08(d) of the State's coal refuse regulations is still less effective than 30 CFR 816.82(a).

In summary, the Secretary finds that, except for Section D.05(d), the State's coal refuse regulations are still less effective than the Federal requirements. Further, West Virginia has satisfied condition (8)(i), but has failed to satisfy condition (8), (ii), and (iv) of the Secretary's approval of the State's permanent program.

29. West Virginia amended its definition of the term "substantial legal and financial commitments in a surface coal mining operation" which was previously contained in Section 2.122 of its regulations. Currently, Section 2.109 provides that substantial legal and financial commitments in a surface coal mining operation means that significant investments and legal commitments have been made in activities and facilities such as power plants, railroads, coal handling, preparation, extraction or storage facilities and other capital-intensive activities. However, the Federal regulations at 30 CFR 762.5 provide that substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the

basis of a long term contract in power plants, railroads, coal handling, preparation, extraction or storage facilities and other capital-intensive activities. West Virginia does not provide that significant investments must be based on coal contracts. Since Congress intended that significant investments be made on the basis of long term coal contracts (44 FR 14997), the Secretary finds that Section 2.109 of West Virginia's regulations is less effective than 30 CFR 762.5. Therefore, approval of the West Virginia program is conditioned upon the inclusion of language in its regulations or other program amendment which is no less effective than 30 CFR 762.5.

30. The State amended Section 3Q of its regulations regarding criteria for permit approval or denial. Section 3Q, now cited as 30, only requires written findings on threatened or endangered species and public roads for permit approval or denial. Section 20–6–18 of WV SCMRA contains some of the written findings that must be made by the Director of DNR before a permit can be issued or denied. However, the Secretary finds that neither Section 20–6–18(b) of WV SCMRA nor Section 30 of the State's regulations provide that no permit application or significant revision to a permit will be approved unless the regulatory authority finds in writing, as required by 30 CFR 786.19, that: (1) The applicant has submitted proof that all reclamation fees required by Subchapter R of this Chapter have been paid; (2) the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act; (3) surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area; (4) the applicant will submit the performance bond, or other equivalent guarantee required under Subchapter J and the regulatory program, prior to the issuance of the permit; (5) the applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of 30 CFR 785.17 and 785.19; (6) the proposed postmining land use of the permit area has been approved by the regulatory authority in accordance with the requirements of 30 CFR 816.133 or 817.133; (7) the regulatory authority has made all specific approvals required under Subchapter K of this Chapter; and (8) the applicant has demonstrated that any existing structure will comply with 30 CFR 786.21. In addition, the Secretary finds that neither Sections 20–6–11, 13(b)(21), and 15 of WV SCMRA nor revised Section 3 of the State's regulations require that the regulatory authority must issue permits with conditions concerning right of entry, environment, public health, and safety as required by 30 CFR 786.27 and 786.29. In summary, approval of the West Virginia program is conditioned upon the inclusion of provisions in its regulations or other program amendment to provide standards for permit approval or denial which are no less effective than 30 CFR 786.19 and in accordance with sections 510 (b), (c) and 522(e) of SMCRA and to require certain permit conditions which are no less effective than those contained in 30 CFR 786.27 and 786.29 and in accordance with section 510 of SMCRA.

31. West Virginia amended Section 5A.01 of its coal exploration regulations to delete the reference to Section 3H.01(a). Section 5A.01, now cited as 5A.02, only requires a description of any endangered or threatened species and the identification of historic lands. The Federal regulations at 30 CFR 776.12(a)(3), however, require a description of the important habitats of any threatened or endangered species and a description of cultural or historical resources listed or eligible for listing on the National Register of Historic Places. Furthermore, Section 5A.01, now cited as Section 5A.02, does not require, in accordance with 30 CFR 776.13, that the regulatory authority must find in writing that the proposed coal exploration and reclamation operation: (1) Will be conducted in accordance with the State's law and regulations, (2) will not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitats of those species, and (3) will not adversely affect cultural resources or districts, sites, buildings, structures or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such matters. Also, each approval issued by the regulatory authority must contain conditions necessary to ensure that the exploration and reclamation activities will be conducted in compliance with WV SCMRA and Section 5 of the regulations. Therefore, the Secretary finds that Section 5A.02 is less effective than 30 CFR 776.12(a)(3) and 776.13. Accordingly, approval of the West Virginia program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than 30 CFR 776.12(a)(3) and 776.13 and in accordance with section 512 of SMCRA.

32. The State amended Section 4F.09(c) of its regulations regarding standards of success for revegetation. Section 4F.09(c), now cited as Section 4F.08, does not require measuring the success of revegetation on the basis of statistically valid sampling techniques as required by 30 CFR 816.116(a) and 817.116(a). Therefore, the Secretary finds that Section 4F.08 of the State's regulations is less effective than 30 CFR 816.116(a) and 817.116(a). Accordingly, approval of the West Virginia program is conditioned upon the inclusion of provisions in its regulations or other program amendment providing for statistical sampling techniques for measuring the success of revegetation which are no less effective than 30 CFR 816.116(a) and 817.116(a) and in accordance with sections 508, 515 and 516 of SMCRA.

33. West Virginia amended its subsidence control plan requirements at Section 7C.04 of its regulations. Section 7C.04, now cited as 7C.03(a)(1), does not provide for the identification of the existence of renewable resource lands, which include acquifers, areas for recharge of acquifers and underground waters as required by 30 CFR 784.20. Therefore, the Secretary finds that Section 7C.03(a)(1) of the State's regulations is less effective than 30 CFR 784.20. Accordingly, approval of the West Virginia program is conditioned upon the inclusion of language in its regulations or other program amendment providing for the identification of renewable resource lands which is no less effective than 30 CFR 784.20 and in accordance with section 516(b) of SMCRA.

34. The State amended Section 14A.01(a)(3) of its regulations regarding pattern of violations. Section 14A.01(a)(3), now cited as 14A.03(a)(3), provides that the Director shall, after hearing, determine that a pattern of violations exists if he finds that there were any violations of the same or related requirements of this Article, the regulations or the permit during three or more "complete" inspections of the permit area within any 12-month period. The Federal regulations at 30 CFR 843.13(a)(3) require that the Director shall promptly review the history of

violations of any permittee who has been cited for the same or related requirements of the law, regulations, etc., during three or more inspections of the permit area within any 12-month period. Also, if after such review the Director determines that a pattern of violations exists or has existed, he or she shall issue a show cause order. Therefore, the Secretary finds that Section 14A.03(a)(3) of West Virginia's regulations is not the same or similar to 30 CFR 843.13(a)(3). Accordingly, approval of the West Virginia program is conditioned upon the inclusion of provisions in its regulations or other program amendment regarding suspension or revocation of permits which are the same or similar to 30 CFR 843.13(a)(3) and in accordance with section 521(a)(4) of SMCRA.

35. West Virginia amended Sections 6B.09(e), 7B.11(g) and 8B.09(f) of its regulations concerning stabilization of rills and gullies. Revised Sections 6B.09(c), 7B.11(e), and 8B.09(d) contain no provisions for stabilizing rills and gullies. OSM revised its regulations on January 10, 1983 (48 FR 1160–1163). The new rules at 30 CFR 816.95(b) and 817.95(b) require the operator to take remedial action if rills and gullies develop which: (1) Disrupt the approved postmining land use or the reestablishment of a vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams. The Secretary finds that Sections 6B.09(c), 7B.11(e) and 8B.09(d), as amended, are less effective than 30 CFR 816.95(b) and 817.95(b). Therefore, approval of the West Virginia program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than 30 CFR 816.95(b) and 817.95(b) and in accordance with sections 515 and 516 of SMCRA.

36. West Virginia amended Section 7C.03 of its regulations regarding subsidence control. The Federal regulations on subsidence control were also amended on June 1, 1983 (48 FR 24638–24652) at 30 CFR 817.121. Section 7C.02(d), as amended, does not prohibit underground mining activities beneath or adjacent to bodies of water with a volume of 20 acre-feet or more unless it is demonstrated that subsidence will not damage or reduce the reasonably foreseeable use of such features as required by 30 CFR 817.121(d). Therefore, the Secretary finds that Section 7C.02(d), as amended, is less effective than 30 CFR 817.121(d). Accordingly, approval of the State program is conditioned upon the inclusion of provisions in its regulations or other program amendment which are no less effective than 30 CFR 817.121(d) and in accordance with sections 516 (b) and (c) of SMCRA.

37. Section 8B.10 of the State's regulations does not contain performance standards for in situ processing as required by 30 CFR 828.11(b)–(e) and in accordance with section 701(28) of SMCRA. West Virginia stated that since there are no in situ operations currently operating in the State, it did not plan to amend this portion of its regulations (Administrative Record No. WV 522). Since Section 8B.10 of West Virginia's regulations is less effective than 30 CFR 828.11(b)–(e), the Secretary is, therefore, disapproving this portion of the West Virginia program.

38. West Virginia amended its regulations at Sections 6B.04(f)(5), 8B.04(f)(5), 7B.04(f)(5), 6B.07 and 4C.05(f). Revised Sections 6B.04(e)(5), 8B.04(d)(5) and 7B.04(f)(5) provide that surface water can not be discharged into underground mine workings unless the operator can demonstrate that it will not be disapproved by the Mine Safety and Health Administration (MSHA) within thirty days of notification. The Federal regulations at 30 CFR 816.55 and 817.55 require MSHA approval prior to allowing discharges. Section 6B.07(f) was added to the State's regulations to prohibit mining within five hundred feet of an underground mine without a thirty day opportunity for disapproval by MSHA. The Federal regulations at 30 CFR 816.79 and section 515(b)(12) of SMCRA prohibit surface mining within five hundred feet of an underground mine. Variances from this distance, however, can be allowed if jointly approved by the state regulatory authority, MSHA and any appropriate State safety agency. Also, revised Section 4C.05(f) of the State regulations provides that no blasting within five hundred feet of an underground mine will be permitted without notification of MSHA with an opportunity for denial within thirty days. The Federal regulations concerning use of explosives were amended on March 8, 1983 (48 FR 9788–9811). The revised Federal regulations at 30 CFR 780.13(c) provide that blasting operations within five hundred feet of active underground mines require approval of State and Federal regulatory authorities concerned with the health and safety of underground miners. In summary, the State's revised regulations only give MSHA thirty days to review permit applications for discharging water into underground mines, mining within five hundred feet of an underground mine and blasting within five hundred feet of an underground mine. Failure by MSHA to disapprove an application within thirty days is considered by the State regulatory authority to mean that MSHA approves the proposed mining activity. The State revised its regulations because past experience indicated that MSHA was not reviewing permit applications in a timely manner. Since Section 20–6–18(a) requires the DNR Director to issue a decision within sixty days of receipt of a complete application, the State felt it was necessary to limit MSHA's review to thirty days. As discussed in public comment 61, MSHA objects to the State giving it a thirty day time limit for reviewing permit applications. The Secretary agrees that thirty days may not give MSHA adequate time to review permit applications; however, the State has the responsibility for issuing permits within a reasonable time. To ensure that the safety of miners is given proper consideration and that permits are issued in a timely manner, the Secretary is disapproving in part the proposed State provisions which limit permit review by MSHA to thirty days. In this regard, the Secretary has directed OSM to meet and work with MSHA and the State regulatory authority to reach a mutual agreement on the length of time to be allowed for permit review by MSHA. Therefore, the Secretary finds that revised Sections 6B.04(e)(5), 8B.04(d)(5), 7B.04(f)(5), 6B.07(f) and 4C.05(f) of the State's regulations are less effective than 30 CFR 816.55, 817.55, 816.79 and 780.13(c), respectively. Accordingly, approval of the West Virginia program is conditioned upon the inclusion of language in its regulations or other program amendment which is no less effective than 30 CFR 816.55, 817.55, 816.79 and 780.13(c).

39. West Virginia deleted Section 9 from its regulations to eliminate the provisions for incidental mining as discussed in Finding 28. In so doing, West Virginia deleted Section 9C from its regulations. This section contained the minimum criteria necessary to qualify for the exemption for Federal or State highway or other construction as provided in 30 CFR Part 707. Since Section 20–6–29 of WV SCMRA still exempts Federal and State highway and other construction from the requirements of WV SCMRA, the State must establish minimum criteria and procedures to ensure that only those operations extracting coal incidental to government-financed construction are exempt from the requirements of WV SCMRA. Therefore, the Secretary finds

that the State's regulations are less effective than 30 CFR Part 707. Accordingly, approval of the West Virginia program is conditioned upon the inclusion of language in its regulations of other program amendments which is no less effective than 30 CFR Part 707 and in accordance with Section 528(3) of SMCRA.

Disposition of Public Comments

The following is a summary of comments received on the revised West Virginia regulations (Administrative Record Nos. WV 469, WV 498 and WV 523) and the amended State statute (Administrative Record No. WV 492) and the Secretary's response to those comments.

All comments on the regulations are addressed using the revised State regulations submitted on September 13, 1983 (Administrative Record No. WV 523), as the basis for the comparative analysis with the Federal requirements.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies on the proposed State permanent program amendments. Of those agencies invited to comment, comments were received from the following Federal agencies: U.S. Fish and Wildlife Service, U.S. Bureau of Mines, U.S. Army Corps of Engineers, U.S. Mine Safety and Health Administration, U.S. Environmental Protection Agency, National Park Service and U.S. Soil Conservation Service.

1. The U.S. Department of Agriculture, Soil Conservation Service, suggested that a soil map be required as part of the mining and reclamation plan. They felt that such a map would assist in determining land use and potential slip hazards.

Since the Federal requirements contain no such provision, the State cannot be required to include this provision in its program. However, the suggestion has been provided to the State.

2. The Department of the Interior, National Park Service, and the Appalachian Research and Defense Fund, Inc. stated that the definition of "valid existing rights" differed significantly from the definition found in 30 CFR 761.5.

This issue was discussed with the State and the definition was modified by the submission of the State's revised regulations. The revised definition is no less effective than that found in 30 CFR 761.5.

3. The Environmental Protection Agency (EPA) stated that the State regulations require compliance with the NPDES permit limitations as contained in 40 CFR 434. The Agency felt that this would be acceptable provided permittees understood that more stringent limits may be necessary to comply with water quality standards.

Sections 6B.04(b), 7B.04(b) and 8B.04(b) provide that discharges from the permit area shall not violate effluent limitations or cause a violation of water quality standards. The inclusion of the provision relating to water quality standards is sufficient to require compliance with effluent limitations which may be more stringent than those contained in 40 CFR 434.

4. EPA stated that Section 4B.05(a) of the State regulations requires sediment control structures to have 0.125 acre feet of storage capacity for each acre of disturbed area unless other sediment control measures are approved. EPA stated that this standard has been used in the past in West Virginia with varying degrees of effectiveness. EPA recommended that more consideration be given to designing sediment control structures with larger volumes.

The Federal requirements for determining sediment storage volume and detention times [30 CFR 816.46 (b) and (c)] were suspended by the Secretary on December 31, 1979 (44 FR 77448–77454). For this reason, the Secretary cannot require specific sediment pond standards until new regulations are promulgated and the states are informed of the new provisions in accordance with 30 CFR 732.17. The new Federal regulations were recently finalized by the Secretary, 48 FR 44032 (September 26, 1983). OSM must now review these regulations and the various state programs to determine which provisions each state must include in its approved program. When the review is completed, the states will be informed of the required program revisions in accordance with 30 CFR 732.17(d).

5. EPA suggested that it may be advisable for the five year bond release liability period to be specifically stated in Section 41.02(c) of the State regulations. As currently written, the regulations reference the section of the State law which provides for the liability period.

Section 4I.02(c) references Chapter 20, Article 6, Section 13(b)(20) of the State law which requires a bond release liability period of five growing seasons. Section 2.51 of the State regulations defines a growing season as one year. Therefore, the State does provide for the five year liability period.

6. The Department of the Interior, Fish and Wildlife Service (FWS), was requested on February 22, 1983, to provide a Biological Opinion under Section 7 of the Endangered Species Act. This opinion was to determine if the program amendment would jeopardize the continued existence of threatened or endangered species or adversely modify their critical habitats. On April 4, 1983, the FWS stated that approval of the West Virginia amendment would not jeopardize threatened or endangered species or their critical habitats provided OSM would take certain actions (Administrative Record No. WV 491). Some changes in the regulations were made by the State in response to the FWS's concerns. The actions are discussed below in items a through d.

a. The FWS stated that OSM should institute an intensive oversight program to insure that the states implement programs to protect endangered and threatened species. In addition, following implementation of the oversight process, OSM should reinitiate formal consultation with the FWS concerning the adequacy of the oversight process in West Virginia.

On November 26, 1982, OSM formally established a procedure for oversight of state permanent programs. This procedure was established by OSM Director J. R. Harris through the OSM Directives System, Subject Number: INE–14, Transmittal Number 144, Titled: "Oversight of the States' Permanent Programs." Under the provisions of the oversight document, each area of the State's approved program is reviewed and an annual evaluation report prepared.

b. The FWS stated that OSM should consult with the FWS regarding appropriate actions whenever OSM believes that West Virginia's program is not adequately protecting endangered or threatened species.

Part III B.3.6. of the Memorandum of Understanding between the Office of Surface Mining Reclamation and Enforcement and the U.S. Fish and Wildlife Service provides for the type of consultation addressed by this comment. Should OSM have reason to believe that the West Virginia program is not protecting the continued existence of endangered or threatened species or their habitats, the procedures provided in the Memorandum of Understanding would be immediately applied.

c. The FWS said that OSM should receive assurance from the State of West Virginia that its permit review procedures will include a provision for written notification to FWS and DNR's Wildlife Resources Division of all permit applications as described in the State's approved program (page 33 of the

program resubmission of December 19, 1980).

The program amendment submitted by the State revised certain portions of the approved State regulations. However, none of the discussions of the various systems designed to implement the provisions of the approved regulations have been changed by the current amendment. Therefore, the discussion contained on page 33 of the December 1980 program resubmission (Administrative Record Number WV 261) is still applicable, and the State's permit review procedures will include written notification of FWS and DNR's Wildlife Resources Division.

d. The FWS stated that OSM should receive assurance from the State that its permit review procedures will provide for holding a permit issuance in abeyance in order to resolve endangered species questions.

Section 30.02 provides for the assurance requested by the FWS. It states that the Director of the WV DNR shall make a written determination that a proposed mining operation would not affect the continued existence of an endangered or threatened species or adversely modify their critical habitats.

7. In addition to their comments associated with its Biological Opinion, the FWS submitted several comments on specific sections of the regulations. These comments are discussed below.

The FWS stated that § 5A.02(b), which references § 3G.02, is inconsistent with the provision of 30 CFR 776.12(a)(5) requiring a map identifying the location of habitats of any endangered or threatened species within an exploration area where more than 250 tons of coal is to be removed.

This comment was made as a result of review of the State regulations submitted on February 16, 1983. The revised regulations submitted on September 13, 1983, contain a new provision [§ 5A.02(h)] which requires a description of any endangered or threatened species identified in the exploration area. In addition, § 5B.09 has been revised to require protection of critical habitats as well as endangered or threatened species. These new provisions are adequate to insure the protection of endangered or threatened species and their critical habitats.

8. The FWS stated that § 3I.01 does not indicate how the applicant is to determine that endangered or threatened species are present prior to developing the required control measures for their protection. They suggested adding an additional subsection to § 3I.01 to remedy this problem.

While this may be helpful, the Secretary cannot require that such an explanation be included in the State regulations. 30 CFR 780.16(b)(17), the Federal counterpart to State § 3I.01, does not provide for this type of explanation. The Federal provision contains almost identical language to that of 3I.01. In addition, the State program contains a lands unsuitable inquiry process which, among other things, determines if any endangered or threatened species exist on the proposed permit area or adjacent areas. This inquiry system provides the primary information on the existence of any such species.

9. The FWS stated that the "other appropriate agencies" referred to in § 4E.01 should be specifically identified to include wildlife agencies as required by 30 CFR 770.12 and 786.11(c)(1).

In the December 1980 program resubmission at page 33 (Administrative Record Number WV 261), the State indicated in its response to the Secretary's findings concerning the program narrative that all agencies identified in 30 CFR 786.11(c) would be notified of the receipt of a permit application. Since this portion of the program has not been amended, the State will notify the fish and wildlife agencies identified in 30 CFR 786.11(c)(1).

10. The FWS stated that § 4E.02(a) of the State regulations would not adequately provide protection to endangered or threatened species. They suggested a language change to provide a greater degree of protection.

The State section is intended to satisfy the requirements of 30 CFR 816.97(b). Since the language of the State section is nearly identical in the Federal provision, the State requirement is acceptable. Changes in the State's regulations possibly may be required when the recently finalized Federal regulations regarding fish and wildlife, 48 FR 30312 (June 30, 1983), are reviewed as required by 30 CFR 732.17(d).

11. The FWS stated that § 5A.02 did not require a narrative description of the distribution of important habitats of fish, wildlife, and plants, including threatened or endangered species as does 30 CFR 776.12(a)(3)(i).

The Secretary agrees with this comment. See the discussion of this issue under Finding 31.

12. The FWS stated that § 5B.09 failed to provide for the written findings required by 30 CFR 776.13(b)(2).

The Secretary agrees with this comment. See the discussion of this issue under Finding 31.

13. The FWS stated that the definition of acid mine drainage contained in § 2.03 should be amended to express acidity in terms of pH.

The revised State regulations submitted on September 13, 1983, contain this provision at § 2.03.

14. The FWS stated that the definition of "buffer zone" in § 2.11 should be revised to include areas which border other water bodies such as, ponds, lakes and wetlands.

The State definition relates to the requirement of § 4B.03 which corresponds to 30 CFR 816.57. Since the Federal provision does not address other water bodies, the State cannot be required to address them in its regulations.

15. The FWS stated that the definition of "fragil lands" in § 2.48 should include rivers designated or under study for inclusion in the National Wild and Scenic Rivers System, rivers on the State of West Virginia's list of Wild and Scenic Rivers, and lightly buffered streams which may be sensitive to acidic inputs.

The West Virginia definition is nearly identical to the Federal definition at 30 CFR 762.5, and no change is required.

16. The FWS stated that § 2.84, the definition of preplan, should also include a completed lands inquiry form.

The lands inquiry system contained in the conditionally approved West Virginia program provides that the inquiry can be made at any time during the permitting process. It is not required to be made at the preplan stage. The inquiry is only required to be made at some point prior to issuance of a permit.

17. The FWS stated that the definition of "reclamation" in Section 2.90 should apply to the disturbed "waters"as well as lands.

The Federal definition found in 30 CFR 701.5 does not contain this provision. Thus, the State definition need not contain one.

18. The FWS stated that Section 2.91, the definition of "renewable resource lands," should also apply to recreational usage.

The Federal definition found in 30 CFR 701.5 does not include recreational usage. Therefore, the State definition is no less effective than the Federal definition.

19. The FWS stated that the definition of "toxic mine drainage" in Section 2.117 should be amended to provide for drainage originating from sub-surface mining as well as surface mining.

The definition of "surface mining" contained in Chapter 20, Article 6, Section 3(t) of the West Virginia Code includes surface impacts incident to an underground coal mine, including the drainage and discharge therefrom. For

this reason, the State definition is no less effective than the Federal definition.

20. The FWS stated that the definition of "woodlands" in Section 2.121 should be amended to delete the phrase that flat or gently rolling land is "beneficial" for operation and harvesting.

The FWS comment was based on a review of the regulations submitted by the State on February 16, 1983. The revised regulations submitted on September 13, 1983, changed this definition to require that flat or gently rolling land was "essential" for operation and mechanical harvesting. This provision is necessary to comply with Finding 13.8 of the Secretary's conditional approval of the West Virginia program on January 21, 1981 (Administrative Record Number WV 392, 46 FR 5919, 11/21/81).

21. The FWS stated that Section 3B.02(c) should state the length of time for the legal advertisement.

The length of time for publication of the legal advertisement is provided in Section 20–6–10(a)(6) of the WV SCMRA.

22. The FWS stated that if mining is proposed within 100 feet of a perennial stream, the legal advertisement required by Section 3B.02 should include a description of the possible stream involvement.

The Federal counterpart to Section 3B.02 does not contain such a provision. Therefore, the State requirement is no less effective than 30 CFR 786.11.

23. The FWS stated that the map required by Sections 3G.02 and 7A.01(h) should require identification of all streams, wetlands and other bodies of water which would be affected by any aspect of the mining activity and the dip and strike of the coal seams to be mined.

Section 3G.02 requires that maps be prepared in accordance with the requirements of Sections 20–6–10(a) (12) and (13) and 20–6–11 of the WV SCMRA. Section 20–6–10(a)(12) of the State law requires that the maps contain all types of information set forth on enlarged topographical maps of the U.S. Geological Survey (USGS) at a scale of 1:24,000. Since the USGS maps would identify all streams, wetlands and other bodies of water, the map required by Section 3G.02 would also contain these features. Section 7A.01(h) is a map requirement for underground mines which is in addition to the requirements of 3G.02. Section 20–6–10(a)(13)(E) of the State law requires that cross-section maps include the strike and dip of the coal to be mined.

24. The FWS stated that any proposed measures to protect or enhance threatened or endangered species (Section 3I) should be coordinated with the Wildlife Resources Division of the WV DNR and the FWS. In addition, they stated that they would like to review and comment on any mining operation which would involve stream structures, relocation, or the placement of materials into a stream.

These comments are addressed by Section 20–6–20(a) of the WV SCMRA and Section 4E.01 of the State regulations. Refer to the discussion on public comments 6c and 9, above.

25. The FWS stated that Section 4A.10 should be amended to include the requirements of Section 4A.04 and 4A.06 for infrequently used access roads.

The Federal requirements for roads at 30 CFR 816.150–176 and 817.150–176 were remanded by the United States District Court for the District of Columbia on May 16, 1980. For this reason, the Secretary could not require any specific performance standards for roads until new regulations were promulgated. Revised regulations for the design, construction and maintenance of roads have been promulgated by the Secretary (48 FR 22110–22124). OSM is now reviewing these regulations as well as all other recently promulgated regulations and the various state programs to determine which provisions each state must include in its approved program. As soon as this review is completed, the states will be informed of the required program revisions in accordance with 30 CFR 732.17(d).

26. The FWS stated that Section 4A.11(a) should require the removal of culverts during final reclamation stages.

See the discussion above for public comment 25.

27. The FWS stated that Section 4B.02 should require that "wetlands" be included in the provisions concerning natural drainways.

The Federal regulations contain no such provision concerning wetlands. The State cannot be required to include this provision.

28. The FWS stated that Section 4B.04 should provide that stream channel divisions are to be avoided to the extent possible. If diversions are permitted, the Director should review the necessity of the proposed work and make a written determination.

The Federal requirements for stream channel diversions are found in 30 CFR 816.44 and 816.57. The State requirements are no less effective than the Federal provisions.

29. The FWS stated that Subsections 4B.05(3)(5) (B) and (C) should require a 100 foot buffer zone around streams, wetlands or other water bodies in spoil disposal areas.

It appears that the FWS may have referenced the wrong subsections. Subsections 4B.05(e)(5) (B) and (C) refer to disposal of waste material during abandonment of sediment control structures located in a stream. Since the impounding structure would be located in a stream, it would be impossible to remove the structure without creating a disturbance within 100 feet of the stream as suggested by FWS. The State provision does provide for protection of the stream bank during removal operations.

30. The FWS stated that the terms "higher and better uses" contained in Section 4D.01 and the term "highest and best use" contained in Section 4D.02 were not defined.

The State sections correspond to 30 CFR 816.133. The Federal regulation uses the same terms as the State regulation and does not provide definitions. Therefore, the State provision is no less effective than the Federal requirement.

31. The FWS stated that the criteria for approval of an alternative postmining land use found in Section 4D.04 should require a legal commitment on the part of the land owner or managing agency to insure that the plan is implemented.

Sections 4D.04 and 6B.07(e), as well as the Federal counterpart found in 30 CFR 816.133(c), require only a showing that the alternative land use is achievable. There is no requirement that the land use must be implemented. The basis for approval of the alternative land use would be the assumption that the use could be achieved.

32. The FWS stated that the "approved wildlife biologist" referred to in Section 4E.03(c) should be approved by the Director of DNR.

The Federal regulations contain no counterpart ot this provision. Thus OSM cannot require the State to Specify the type of approval required for biologists in charge of experimental wildlife planting.

33. The FWS stated that the provisions of Section 4F.08(e) relating to revegetation standards for forest land and/or wildlife should be consistent with the provisions of Section 4F.08(d) which provides for substandard areas to be less than ¼ acre or less than 10% of the area seeded. As written, Section 4F.08(e) requires an 80% ground cover.

Section 4F.08(e) of the State's regulations is no less effective than 30 CFR 816.116(b)(3)(iv) in that the Federal regulation only requires a 70 percent ground cover or that the ground cover is determined by the regulatory authority to be adequate to control erosion.

34. The FWS stated that section 4F.10 should require that, when wildlife habitat is the postmining land use , the Wildlife Resources Division of the WV DNR should inspect the area prior to bond release.

The Federal counterpart to Section 4F.10 [30 CFR 816.116(b)(3)(IV)] contains no such provision. Thus, the State cannot be required to provide this additional inspection.

35. The FWS stated that Section 4I.02(c)(2)(B) should require that all water quality parameters be within established standards prior to bond release.

Section 4I.02(c)(2)(B) is comparable to 30 CFR 800.40(c)(2), as amended on July 19, 1983 (48 FR 32932–32964). Both of these sections relate to partial bond release following revegetation of the disturbed area. This phase of reclamation is concerned primarily with the establishment of vegetation and the control of sediment. None of the provisions relate to other water quality standards. The determination that other water standards are being met is made at the time of final bond release as provided by Section 4I.02(c)(3)(B) and 30 CFR 800.40(c)(3).

36. The FWS stated that Section 5A.02(c) should require that the legal advertisement indicate any involvement with streams, water bodies, or wetlands.

The Federal counterpart to Section 5A.02(c) [30 CFR 778.12(b)] does not contain such a provision. Thus, the State cannot be required to include it in its regulations.

37. The FWS stated that Section 5B.09 should require review by the Wildlife Resources Division of the WV DNR and the FWS of any prospecting application indicating involvement with endangered or threatened species.

Section 5B.09 is a performance standard and does not relate to the identification of endangered or threatened species. Section 5A.02(h) does require a description of any endangered or threatened species identified within the prospecting area. There is no Federal provision requiring review of prospecting applications by any agency other than the regulatory authority. Therefore, the State provision is acceptable. For additional discussion of this issue see Finding 31.

38. The FWS stated that Sections 6A.02(a)(2), 6B.02(b)(2), 6B.06(b), 7A.02(a)(2), 7A.02(b)(2), 7B.07(b), 8B.02(a)(2), 8B.02(b)(2) and 8B.06(b) should include temperature and aluminum in the list of water quality parameters.

No analysis for either temperature or aluminum is required by 30 CFR 779.15 and 16, 783.15 and 16, or 816.52, the Federal counterparts to the State sections referenced above. Thus, the State can not be required to include such water quality parameters in its regulations.

39. The FWS stated that a time frame (e.g., 6 months) should be established by Sections 6B.03(b) and 7B.03(b) for the redistribution of topsoil to minimize erosion and loss of seed viability.

30 CFR 816.23 does not contain any provisions requiring a time frame for redistribution of topsoil. It requires that, if the topsoil is not promptly redistributed, it must be protected. The requirements of Section 20–6–13(b)(5) of the WV SCMRA and Sections 6B.03 and 7B.03 of the State regulations are no less effective than the Federal provisions.

40. The FWS stated that Sections 6B.06(a)(2), 7B.04(d), 7B.07(a)(2), and 8B.06(a)(2) should require that, if water quality standards cannot be met without treatment, a plan for long-term treatment must be developed and approved by the Director of the WV DNR.

The Federal regulations contain no provision for a long-term treatment plan. The basic assumption in the issuance of a mining permit is that water quality standards will be met following reclamation. However, if it is not possible to meet these standards, the State would be unable to release the bond since Section 41.02(c)(3) requires compliance with the requirements of the WV SCMRA, the regulations, and the pre-plan. The retained bond and the West Virginia Special Reclamation Fund, which is provided for in Section 20–6–12(h) of WV SCMRA and funded by a special reclamation tax imposed on all State coal surface mining operations, can be utilized for the continued treatment.

41. The FWS stated that Section 6B.07(c)(3) should require that drainage be directed to the outslope in areas where toxic overburden exists and may cause water quality problems as it infiltrates the overburden.

The intent of Section 6B.07(c)(3) is not to allow drainage to saturate the mountaintop, but rather to direct all runoff to one or more locations where it can then be diverted over the outslope in a controlled manner. The State provision is nearly identical to that found in 30 CFR 824.11(a)(8).

42. The FWS stated that Section 6B.08 should prohibit placement of excess spoil within 100 feet of a stream, wetland or other water body.

The placement of excess spoil on an area creates a "disturbed area" as defined by Section 20–6–3(j) of the WV SCMRA. Since the area is disturbed, the requirements of Section 4B.03 of the regulations would apply. These regulations require that no land within 100 feet of a intermittent or perennial stream may be disturbed. No Federal provision exists concerning disturbances within 100 feet of wetlands or other water bodies, and therefore, the State cannot be required to include such a provision.

43. The FWS stated that Sections 6B.08(b)(1)(A) and 6B.08(c)(2)(A) should prohibit construction of valley fills and side hill fills over perennial streams and springs.

The provisions of Sections 6B.08(b)(1)(A) and 6B.08(c)(2)(A) correspond to 30 CFR 816.71(1) and are no less effective than the Federal requirements. Both the Federal and State regulations provide for a system of underdrains to prevent water infiltration into the fills from springs, watercourses and seeps.

44. The Appalachian Research and Defense Fund, Inc. (ARDF) stated that the provision requiring discharges from the permit area to meet applicable water quality standards following grade release had been deleted from Section 6B.04 of the regulation approved by the Secretary on January 21, 1981.

The deleted provision to which this comment applies was a requirement that was more stringent than the Federal counterpart. 30 CFR 800.40(c)(2) provides that reclamation phase II (grade release) is complete when, among other requirements, the land is not contributing suspended solids to streamflow or runoff outside the permit area. The revised State provision is no less effective than the Federal provision.

45. The ARDF stated that the revised regulations fail to require the operator to fill, grade or otherwise stabilize areas with rills or gullies deeper than 9 inches.

On January 10, 1983, the Secretary published final regulations concerning requirements for erosion control (48 FR 1160–1163). The new provisions provide that rills and gullies must be filled, regarded or otherwise stabilized if they: (1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards. The State regulations do not contain any provisions regarding rills and gullies and are less effective than the Federal requirements. See Finding 35 for a discussion of this issue.

46. The ARDF stated that Section 4C.03 should provide that the blasting schedule to be published and mailed to residents contain information about the availability of a preblast survey as required by 30 CFR 816.64(a).

On March 8, 1983, the Secretary promulgated revised regulations to replace the previous requirements concerning the use of explosives (48 FR 9788–981). The revised Federal provisions require operators to notify in writing all residents within ½ mile of the permit area on how to request a preblast survey. The State regulations submitted on September 13, 1983, contain revised Section 4C.07, which is found to be no less effective than the Federal provisions.

47. The ARDF suggested that the definition of "subsidence" in Section 2.108 be amended to include effects on water bearing strata that are being used as a source of water for domestic or household use.

Although the definition of subsidence does not address the possible effects on aquifers, other provisions of the State program do provide protection. Sections 6A.02, 7A.02 and 8A.02 all require submission of a statement of probable hydrologic consequences of the mining operation. In addition, Section 20–6–10(a)(11) of the WV SCMRA requires an assessment of the probable cumulative impacts of all anticipated mining on the hydrology of the area and Section 20–6–27 requires replacement of water sources affected by mining. These provisions are no less effective than the Federal provisions.

48. The ARDF stated that Section 4A.03(d) allows the Director to approve a water control structure equal to or greater than the stream channel immediately upstream and downstream from the structure. They stated that such an approval was not contemplated by 30 CFR 816.153.

The Federal provisions for roads were remanded by the United States District Court for the District of Columbia on May 16, 1980. See discussion on public comment 25, above.

49. The ARDF stated that Section 7C.03 of the regulations approved by the Secretary on January 21, 1981, required underground mines to provide a buffer zone around streams, impoundments, urbanized areas, etc., while the proposed regulations omitted the requirement for buffer zones. They stated that this omission was inconsistent with 30 CFR 817.126. They further stated that Section 7C.03 failed to include private water supplies among the list of items to be surveyed and included in the subsidence control plan. They said that private water supplies must be included to maintain the value and reasonably foreseen use of overlying surface lands as required by Section 20–6–14(b)(1) of the WV SCMRA.

The Federal regulation at 30 CFR 817.126 was removed by publication of revised Federal regulations for subsidence control on June 1, 1983 (48 FR 24638–24652). The new Federal requirement in 30 CFR 817.121(d) prohibits mining beneath or adjacent to certain structures and areas. Section 7C.02(d) provides the same type of protection for all areas, except for bodies of water with a volume of 20 acre-feet or more. The State provisions are less effective than the Federal provisions. See Finding 36.

A subsidence control plan which identifies all renewable resource lands is required by 30 CFR 784.20. Renewable resource lands is defined by 30 CFR 701.5 to include all aquifers and areas for the recharge capacity of aquifers and other underground waters. The State regulations provide a list of structures and areas to be identified, but fail to include aquifers or other underground waters unless they are used as a public water supply. The State provision is less effective than the Federal provisions. See Finding 33.

50. The ARDF said that the definition of "acid mine drainage" in Section 2.03 violates State and Federal law.

Since the time of the ARDF review, the State revised its definition of acid mine drainage by the submission of revised regulations on September 13, 1983. The revised definition is no less effective than the Federal definition at 30 CFR 701.5.

51. The ARDF stated that Section 4I.01 should require that the legal advertisement for bond release contain information concerning the right to comment on the proposed bond release.

Section 20–6–26(a) of WV SCMRA requires that a permittee publish an advertisement for bond release in the same manner as required for permit applications. In other words, the public notice requirements for permit applications also apply to bond release. Specifically, Section 20–6–10(a)(6) requires that the advertisement contain the location where the application is available for public inspection and state that written protests will be accepted for at least thirty days after the last publication of bond release as required by 30 CFR 800.40(a)(2), as amended on July 19, 1983 (48 FR 32932–32964). Also, Section 20–6–20(b) requires the permittee to advertise a public hearing on a bond release for two weeks as required by 30 CFR 800.40(f). Therefore, the State requirements for bond release are no less effective than the Federal requirements.

52. The ARDF stated that Section 4D.04 should require specific plans and commitments before an approval is granted for an alternative postmining land use.

The State provisions at Section 4D.04 and 6B.07(e) provide for the necessary plans and commitments prior to approval of alternative postmining land uses and are no less effective than 30 CFR 816.133(c).

53. The ARDF stated that Section 3J should not allow mining within 300 feet of an occupied dwelling on the basis of valid existing rights.

Section 3J is no less effective than 30 CFR 761.11(e), 761.12(e) and Section 522(e) of SMCRA. The Federal provisions do not require a written waiver to mine within 300 feet of an occupied dwelling if the applicant has valid existing rights.

54. The ARDF stated that Section 6A.03 fails to require coal seam analysis for sulfur, pyrite and marcasite as does 30 CFR 779.14.

This comment was made as a result of review of the February 16, 1983, regulations. The regulations submitted on September 13, 1983, contain an additional provision requiring analysis for pyritic sulfur. This analysis is sufficient to provide the necessary information on the acid-producing potential of the coal seam and is no less effective than the Federal requirement.

55. The ARDF stated that 6A.04 does not provide for approval of the Mine Safety and Health Administration for mining within 500 feet of an underground mine.

This provision is contained in Section 6B.07(f). Also, see Finding 38 for a discussion of this issue.

56. The ARDF stated that Section 6B.04 should require that discharges from the permit area meet applicable water quality standards after grade release. In addition, they stated that the deletion of Section 20–6–12(f) of the WV SCMRA resulted in a requirement which is less effective than 30 CFR 816.42.

Both of these comments relate to the criteria for grade release as contained in the State regulations. Grade release corresponds to reclamation phase II as defined by 30 CFR 800.40(c)(2). Under the provisions of 30 CFR 800.40, only the suspended solids standards must be met at this stage of reclamation. All other water quality standards must be met at reclamation phase III. See public comment 35, above, for additional discussion.

57. The ARDF stated that the provisions of Section 7A.04 of the regulations approved by the Secretary on January 21, 1981, should be retained. This section required a plan for the design of barriers to insure stability.

The revised provision in Section 7A.04 still requires a plan for mine abandonment. The plan must include the maximum head of water expected on the barrier and the width of the barrier. This information is adequate to determine if additional measures need to be taken to insure the stability of the abandoned mine.

58. The ARDF stated that the definition of "woodlands" in Section 2.133 should require that flat or gently rolling land is essential.

This change was made in the revised regulations at Section 2.121 submitted on September 13, 1983.

59. The ARDF stated that the definition of "gravity discharge" in Section 2.50 should not exclude discharges which result from flooding of a mine to the level of the discharge.

The definition of gravity discharge is intended to clarify requirements of Section 20–6–14(b)(12) of the WV SCMRA as they relate to performance standards for surface mining activities involving acid-producing or iron-producing coal seams. The definition adequately supports the environmental protection aspects of section 516(b)(12) of SMCRA without precluding mining of coal seams which have acid or toxic potentials. The definition is primarily aimed at preventing gravity discharges from updip mines when water flows freely downgradient and air flows freely back into the mine. The State provision is no less effective than the Federal requirements.

60. The ARDF stated that several of the deficiencies identified by OSM in its informal review of the West Virginia regulations had not been corrected by the revised regulations submitted on June 15, 1983. Specifically, items 194, 195, 221, 223, 224 and 226 of OSM's informal comments on West Virginia's proposed regulations of February 3, 1983 (Administrative Record Number WV 500).

Comments 194 and 195 of the OSM informal review concerned requirements which had been suspended by the Secretary in December 1979 (See public comment 4, above). These comments were provided to the State to alert them to the new requirements being considered by the Secretary. It is not necessary for the State to incorporate these proposed Federal provisions in their program until notified to do so in accordance with 30 CFR 732.17.

Comment 221 of the OSM informal review related to the protection of surface and ground water. The revised State regulations contain new provisions relating to the protection of ground and surface water quality and quantity in Sections 6B.04, 7B.04 and 8B.04. These new provisions are no less effective than the Federal requirements at 30 CFR 816.50 and 817.50.

Comment 223 relates to the installation, maintenance and removal of surface water monitoring equipment as required by 30 CFR 816 and 817.52(b)(3). Section 20–6–15(b)(1)(C) of WV SCMRA requires the installation, utilization and maintenance of water monitoring equipment. Thus, the State provision is no less effective than 30 CFR 816 and 817.52(b)(3).

Comment 224 relates to a ground water monitoring requirement which has been proposed but has not been fully promulgated by the Secretary. The State cannot be required to include this requirement in its regulations until notified to do so in accordance with 30 CFR 732.17(d).

Comment 226 relates to the provisions of 30 CFR 817.50 concerning discharges of water from underground mines. The State regulations do not contain all of the specific provisions contained in 30 CFR 817.50. However, Section 7B.04 of the State regulations does provide that discharges from the permit area shall not cause a violation of water quality standards. In addition, treatment facilities are required, if necessary. Therefore, these provisions are no less effective than the Federal provisions at 30 CFR 817.50.

61. The Mine Safety and Health Administration (MSHA) stated that Sections 4C.05(f) and 8B.04(d) conflict with MSHA policies. MSHA objected to the fact that these provisions limit their review of permit applications for diverting or discharging water into underground mines and for blasting within five hundred feet of an underground mine to thirty days.

The Secretary agrees with MSHA's concerns. See Finding 38 for a discussion of this issue.

62. The West Virginia Coal Association (WVCA) stated that West Virginia should not amend its definition of woodlands at Section 2.121 to require that such land be essential for operation and mechanical harvesting.

The amendment that the State has proposed is necessary to comply with Finding 13.8 of the Secretary's conditional approval of the State's program on January 21, 1981 (Administrative Record No. WV 392, 46 FR 5919, 11/21/81).

63. The WVCA stated that Section 3F.01 is more stringent than the Federal provisions in that the application must contain a listing of any current or previous permits or pending applications in the United States.

The State regulations at Section 3F.01 are no less effective than the Federal requirements. 30 CFR 778.13(d) requires that the permit application must contain a statement of any current or previous coal mining permits or pending applications held by the applicant in the United States subsequent to 1970. For further discussion of this issue see Finding 10(a).

64. The WVCA stated that Section 3L.04(b) should be amended to require that the application for transfer contain the permit number or other identifier.

Section 3L.04(b) of the State's regulations is no less effective than 30 CFR 788.18(a)(2)(i).

65. The WVCA stated that Section 4B.05(a)(7)(B) of the State's regulations was more stringent than the Federal requirements for freeboard.

Section 4B.05(a)(7)(B) is no less effective than 30 CFR 816.46(i) and 817.46(i).

66. The WVCA stated that Section 4B.05(c) should be changed to require yearly and not quarterly inspections of impoundments.

Section 4B.05(c) is no less effective than 30 CFR 816.49(f), 817.49(f) and 77.216–4.

67. The WVCA stated that Section 4F.01(c) is inconsistent with the Federal requirements in that it requires vegetative cover of the same seasonal variety native to the area.

Section 4F.01 is no less effective than 30 CFR 816.11(b)(1) and 817.11(b)(1). Furthermore, a State does not have to incorporate revised Federal requirements in its program until it is notified to do so in accordance with 30 CFR 732.17(d).

68. The WVCA stated that Section 4H.05 should be amended to reflect the Federal requirements for self bonding at 30 CFR 800.23, as amended on August 10, 1983.

The Federal self bonding requirements were suspended on December 7, 1981 (46 FR 59934–59936). New self-bonding rules were promulgated on August 10, 1983, 48 FR 36418, and became effective on September 9, 1983. OSM is currently comparing each State's regulations with the revised Federal regulations to determine which provisions each State must include in its approved program. When the review is completed, each State will be informed of the required program revisions in accordance with 30 CFR 732.17(d).

69. The WVCA stated that the State should clarify what it means by duration in relation to ground water monitoring at Section 6B.06(b).

As set forth in Section 6B.06(b), the State requires that the ground water monitoring plan include a statement regarding the length of time that elapses

during which the ground water sample is taken. The State's provision is no less effective than 30 CFR 780.21(b)(4).

70. The WVCA stated that West Virginia only allows a variance to approximate original contour (AOC) for steep slope mining, and OSM allows an AOC variance in any case.

Section 6B.07(e), like the Federal requirements, allows a variance from AOC if certain requirements are satisfied.

71. The WVCA stated that Section 6B.07(e)(8) was more stringent than the Federal requirements for deeming a watershed to be improved.

The State provision is no less effective than 30 CFR 785.16(b)(4) and is in accordance with section 515(e) of SMCRA. A State does not have to incorporate revised Federal provisions in its program until it is notified to do so as required by 30 CFR 732.17(d).

72. The WVCA stated that the use of the word "unless" in Section 6B.08(b)(1)(D) made it unclear as to when a rock core chimney drain could be utilized.

Section 6B.08(b)(1)(D) is no less effective than 30 CFR 816.72, 816.73, 817.72 and 817.73. See Finding 9 for further discussion of this issue.

73. The WVCA suggested that the State insert the words "with a downslope * * * 20%" for side hill fills and "and that the * * * 36%" for durable rock fills at Sections 6B.08(c) and 6B.08(d), respectively.

The State amended its regulations submitted on September 13, 1983, at Sections 6B.08(c) and 6B.08(d) to require that the downslope at the toe of side hill fills not exceed 36% and that the slope at the toe of durable rock fills is less than 20%. The State has already revised its regulations in response to the WVCA's recommendations. However, it appears that the WVCA has inadvertently transposed the required percent of slope in each section.

Conditional Approval of Amendments/ Disapprovals/Removal of Conditions

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the West Virginia program, the Secretary has concluded that they are minor. West Virginia has agreed by letter dated November 8, 1983, to correct all of the deficiencies by the date specified in 30 CFR Part 948. The Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program if provisions correcting the deficiencies are not made by the date specified in 30 CFR Part 948.

Accordingly, the West Virginia permanent program is hereby amended to indicate: partial approval of the February 16, April 29, June 15 and September 13, 1983, amendments as set forth herein, disapproval of Section 8B.10 of West Virginia's regulations and Section 20–6–15(g) of WV SCMRA as set forth in 30 CFR 948.12, and removal of the conditions of approval of the West Virginia program set forth at 30 CFR 948.11(a) (2), (3), (4), (5), (7), (8)(i), (9), (11), (13), (18), (20), (21), (23), (24), (26), (27), (28), (29), (30), (31), (32), (33), and (34). The partial approval of the amendments, the disapprovals and the removal of conditions are being made effective July 15, 1983, to coincide with West Virginia's adoption of its emergency regulations.

Additional Information

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to the Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of state regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the state.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

4. Environmental Protection Agency (EPA) Concurrence. On April 11 and July 27, 1983, the EPA transmitted its written concurrence on the West Virginia program amendments submitted on February 16, April 29, and June 15, 1983, as they relate to air or water quality standards under the authority of the Clean Air Act, as amended, (42 U.S.C. 1857 *et seq.*) and the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) (Administrative Record Nos. WV 517 and WV 518). Since the revised regulations submitted by West Virginia on September 13, 1983, did not involve changes to proposed air and water quality standards that EPA had already reviewed, it was not necessary to obtain EPA concurrence on those revisions.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 948 is amended as set forth herein.

Dated: November 4, 1983.

W. L. Dare,

Acting Deputy Assistant Secretary for Energy and Minerals.

PART 948—[AMENDED]

Part 948 of Title 30 is amended as follows:

1. 30 CFR 948.10 is revised to read as follows:

§ 948.10 State regulatory program approval.

The West Virginia State program, as submitted on March 3, 1980, as amended and clarified on July 16, 1980, and resubmitted December 19, 1980, was conditionally approved, effective January 21, 1981. Beginning on that date, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non Indian lands. Beginning on May 11, 1982, the program also included the coal refuse regulations conditionally approved as a program amendment on that date. Section 10 of the regulations contained in the conditionally approved program of January 21, 1981, was deleted from the program as of May 11, 1982. Further, beginning on September 10, 1982, March 1, 1983, and July 15, 1983, the program includes the modifications submitted by West Virginia on June 17, 1982, September 14, 1982, October 29, 1982, February 16, 1983, April 29, 1983, June 15, 1983 and September 13, 1983. Copies of the conditionally approved program, as amended, are available at:

(a) West Virginia Department of Natural Resources, 1800 Washington Street, East, Room 630, Charleston, West Virginia 25305, Telephone: (304) 348–9160

(b) Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158

(c) Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 "L" Street, NW.,

Room 5315, Washington, D.C. 20240, Telephone: (202) 343–7896

§ 948.11 [Amended]

2. 30 CFR 948.11(a) (2), (3), (4), (5), (7), (9), (11), (13), (18), (20), (21), (23), (24), (26), (27), (28), (29), (30), (31), (32), (33) and (34) are removed and reserved.

3. 30 CFR 948.11(a)(1) is hereby revised to read as follows:

§ 948.11 Conditions of State regulatory program approval.

(a) * * *

(1) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include provisions for augering on previously mined areas which are no less effective than 30 CFR 819.19(b) and in accordance with sections 102 and 515 of SMCRA.

* * * * *

4. 30 CFR 948.11(a)(8) is hereby revised to read as follows:

(a) * * *

(8) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to require compliance with permanent program regulations rather than interim program regulations.

(i) [Reserved]

(ii) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to eliminate the waiver for stability requirements if site conditions indicate that failure will not occur as required by 30 CFR 816.65.

(iii) [Reserved]

(iv) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program: to (A) Require covering of coal mining waste banks with non-toxic and non-combustible material as required by 30 CFR 816.85(d) and 817.85(d); (B) specify construction criteria for subdrainage systems as required by 30 CFR 816.72 (b)(1) and (b)(4); (C) prohibit the use of impoundments on constructed fills as required by 30 CFR 816.71(g); and (iv) require inspection of coal refuse piles as required by 30 CFR 816.82(a).

* * * * *

5. 30 CFR 948.11(a)(14) is hereby revised to read as follows:

(a) * * *

(14) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include provisions which provide that the maximum peak particle velocity shall not be exceeded at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area and are no less effective than 30 CFR 816.67(d)(2) and 817.67(d)(2).

* * * * *

6. 30 CFR 948.11(a)(16) is hereby revised to read as follows:

(a) * * *

(16) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include criteria for the transfer of wells which are no less effective than 30 CFR 816.53 and 817.53.

* * * * *

7. 30 CFR 948.11(a)(19) is hereby revised to read as follows:

(a) * * *

(19) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its law or program to require that the applicant list any and all notices of violations of all state environmental protection laws and regulations during the three year period prior to the date of application in accordance with section 510(c) of SMCRA.

* * * * *

8. 30 CFR 948.11(a) is hereby amended to add paragraphs (a) (36)–(45) which contain conditions:

(a) * * *

(36) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to provide a definition for the term "substantial legal and financial commitments in a surface coal mining operation" which is no less effective than 30 CFR 762.5.

(37) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to: provide standards for permit approval or denial which are no less effective than 30 CFR 786.19 and in accordance with sections 510 (b), (c) and 522(e) of SMCRA and require certain permit conditions which are no less effective than those contained in 30 CFR 786.27 and 786.29 and in accordance with section 510 of SMCRA.

(38) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to: include provisions to require that coal exploration applications contain a description of the important habitats of any threatened or endangered species and a description of cultural or historical resources listed or eligible for listing on the National Register of Historic Places which are no less effective than 30 CFR 776.12(a)(3) and in accordance with section 512 of SMCRA and provide standards for the approval or disapproval of coal exploration applications which are no less effective than 30 CFR 776.13 and in accordance with sections 512 (a) and (d) of SMCRA.

(39) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Viriginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to provide for statistical sampling techniques for measuring the success of revegetation which are no less effective than 30 CFR 816.116(a) and 817.116(a) and in accordance with section 508, 515 and 516 of SMCRA.

(40) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Viriginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include provisions for the identification of renewable resource lands which are no less effective than 30 CFR 784.20 and in accordance with section 516(b) of SMCRA.

(41) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include provisions for the suspension or revocation of permits which are the same or similar to 30 CFR 843.13(a)(3) and in accordance with section 521(a)(4) of SMCRA.

(42) Termination of the approval found in Section 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or

otherwise amends its program to include provisions for the stabilization of rills and gullies which are no less effective than 30 CFR 816.95(b) and 817.95(b) and in accordance with sections 515 and 516 of SMCRA.

(43) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include provisions to prohibit mining activities beneath or adjacent to bodies of water with a volume of 20 acre-feet which are no less effective than 30 CFR 817.121(d) and in accordance with sections 516 (b) and (c) of SMCRA.

(44) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include provisions for MSHA approval of permit applications involving discharging of water into underground mines, mining within five hundred feet of an underground mine and blasting within five hundred feet of an underground mine which are no less effective than 30 CFR 816.55, 817.55, 816.79 and 780.13(c)

(45) Termination of the approval found in § 948.10 will be initiated on March 30, 1984, unless West Virginia submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to include minimum criteria for the exemption of government-financed highway and other construction which are no less effective than 30 CFR Part 707 and in accordance with section 528(3) of SMCRA.

9. 30 CFR 948.12 has been added to read as follows:

§ 948.12 State program provisions disapproved.

The following provisions of the West Virginia permanent regulatory program submission are hereby disapproved:

(a) Section 20–6–15(g) of the West Virginia Surface Coal Mining and Reclamation Act is disapproved to the extent that it states, "*Provided*, that except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip."

(b) Section 8B.10 of West Virginia's regulations is disapproved to the extent that it provides that any in situ mining in the State will be conducted in accordance with Sections 3, 4, 7 and 8 of the State's regulations.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83–30527 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Bundling and Palletizing Second-, Third-, and Fourth-Class Bulk Mailings; Further Modification

AGENCY: Postal Service.

ACTION: Modification of final rule.

SUMMARY: This rule makes a non-substantive modification of a recently adopted final rule on bundling and palletizing of second-, third-, and fourth-class bulk mailings. As published, the rule required, among other things, that top caps be affixed to pallets with nylon strapping. Certain mailers have since requested the Postal Service to change the required strapping material from nylon to metal, which does not stretch and is therefore said to be more effective. Rather than require that metal instead of nylon strapping be used, the Postal Service is changing the regulation to require top caps to be affixed with "appropriate" strapping.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 245–4749.

SUPPLEMENTARY INFORMATION: On October 11, 1983, the Postal Service published in the **Federal Register** its final rules on bundling and palletizing of second-, third- and fourth-class bulk mailings. 48 FR 46031. In prescribing the physical characteristics of pallets the Postal Service required that top caps be affixed to pallets with nylon strapping. Certain mailers, however, said that metal strapping was more effective than nylon and that the requirement should be changed to metal strapping. The Postal Service is removing the requirement that the strapping be nylon and replacing it with a requirement that the strapping be "appropriate."

In view of the above considerations, the last sentence in §§ 467.244, 467.344, 667.644, 667.744, 667.824, 767.535, and 767.624 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1, is changed to read as follows: "Top caps must be affixed to the pallet with appropriate strapping."

These changes will be reflected in the next transmittal letter making changes to the Domestic Mail Manual and will be published as provided in 39 CFR 111.3.

List of Subjects in 39 CFR Part 111

Postal Service.

(39 U.S.C. 401(2), 404(a)(2))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83–30853 Filed 11–15–83; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL 2470–6]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On February 8, 1983, EPA published a notice of proposed rulemaking concerning volatile organic compounds (VOC) rules submitted by the State of California. That notice proposed to fully approve the VOC rules. Today's notice takes final action under Part D of the Clean Air Act to approve all these rules since they are consistent with the recommendations of the Control Techniques Guidelines (CTG) and Sections 110 and 172 of the Clean Air Act. No comments were received by EPA on the February 8 proposal notice.

DATES: This action is effective December 16, 1983.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano, (415) 974–7641.

ADDRESS: A copy of today's revision to the California State Implementation Plan is located at:

The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408,

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1983 (48 FR 5765), EPA published a notice of proposed rulemaking for certain VOC rules submitted by the State on May 20 and August 6, 1982. That notice should be used as a reference in reviewing today's

notice. The February 8 notice provides a description of the proposed rules and compares them to the Group I and II CTG documents. EPA determined that the rules are consistent with the CTG reasonably available control technology (RACT) recommendations and Sections 110 and 172 requirements of the Clean Air Act. In addition, EPA noted that the other (non-CTG) VOC rules strengthen the District requirements and provide controls necessary for the attainment and maintenance of the National Ambient Air Quality Standards.

Supplementary Revision

After EPA's review, which appears in the February 8 proposal notice, the State submitted a revision to Fresno County Rule 409.1, *Architectural Coatings*. This revision is addressed in a separate **Federal Register** notice.

EPA Actions

EPA is taking final action under Section 172 of the Clean Air Act to approve the following rules since they are consistent with the Group I CTG and represent RACT:

Bay Area Air Quality Management District (AQMD)

Regulation 8

Rule 5—Storage of Organic Liquids (8/6/82)
Rule 8—Wastewater Separators (8/6/82)
Rule 10—Process Vessel Depressurization (8/6/82)

San Joaquin County Air Pollution Control District (APCD)

Rule 412—Organic Liquid Loading (5/20/82)

South Coast AQMD

Rule 1128—Paper and Fabric Coating Operations (5/20/82)

EPA is also taking final action under Section 172 to approve the following rules as they are consistent with the Group II CTG and RACT:

Bay Area AQMD

Regulation 8

Rule 14—Surface Coatings of Large Appliances and Metal Furniture (5/20/82)
Rule 18—Valves and Flanges at Refinery Complexes (5/20/82)
Rule 19—Control of Volatile Organic Compound Emissions from Surface Coating of Miscellaneous Metal Parts and Products (5/20/82)

Monterey Bay Unified APCD

Rule 428—Manufacture of Rubber Tires (5/20/82)

South Coast AQMD

Rule 467—Pressure Relief Devices (5/20/82)
Rule 1102.1—Perchloroethylene Dry Cleaning (8/6/82)

Stanislaus County APCD

Rule 409.4—Surface Coating of Manufactured Metal Parts and Products (8/6/82)
Rule 409.8—Perchloroethylene Dry Cleaning Systems (8/6/82)

In addition, EPA is taking final action under Section 110 of the Clean Air Act to approve the following rules since they will strengthen the State Implementation Plan, and are consistent with Section 110 of the Clean Air Act:

Bay Area AQMD

Regulation 8

Rule 2—Miscellaneous Operations (8/6/82)
Rule 4—General Solvent and Surface Coating Operations (8/6/82)
Rule 7—Gasoline Dispensing Facilities and Gasoline Delivery Vehicles (5/20/82)

South Coast AQMD

Rule 442—Usage of Solvents (5/20/82)

Tulare County APCD

Rule 410.1—Architectural Coatings (5/20/82)

Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 1984. This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Authority: Secs. 110, 129, 171–178, and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).

Dated: November 7, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(124) (i)(C), (iv)(C) and (v)(B), (125) (ii)(D), (iii)(B), (v)(B), (viii)(B) and (ix) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(124) * * *

(i) * * *

(C) Amended Regulation 8, Rules 2, 4, 5, 8 and 10.

* * * * *

(iv) * * *

(C) * * *

(v) * * *

(B) New or amended Rules 409.4 and 409.8.

* * * * *

(125) * * *

(ii) * * *

(D) Amended Rules 442, 467 and 1128.

(iii) * * *

(B) New Rule 428.

* * * * *

(v) * * *

(B) Amended Rule 410.1.

* * * * *

(viii) * * *

(B) Amended Regulation 8, Rules 7, 14, 18 and 19.

(ix) San Joaquin County APCD.

(A) Amended Rule 412.

* * * * *

[FR Doc. 83-30856 Filed 11-15-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[NC-006; A-4-FRL 2470-4]

Approval and Promulgation of Implementation Plans; North Carolina; Bubble for E. I. du Pont de Nemours and Company, Kinston

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 28, 1983, the North Carolina Department of Natural Resources and Community Development submitted for parallel processing an

alternative emission reduction scheme which would allow E. I. du Pont de Nemours and Company to bubble emissions from thirteen particulate sources at its Kinston facility. EPA proposed approval of this bubble on August 5, 1983, (47 FR 35672); no comments were received. Since the bubble was subsequently adopted by the North Carolina Environmental Management Commission and submitted for EPA's approval, the Agency today approves it.

DATE: This action is effective December 16, 1983.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Air Management Branch, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20005

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Denise W. Pack, Air Management Branch, EPA Region IV, at the above address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On January 28, 1983, the North Carolina Department of Natural Resources and Community Development (NRCD) submitted an emission reduction scheme for the E. I. du Pont de Nemours and Company (du Pont), Kinston facility. The application that du Pont submitted to North Carolina on April 21, 1982, involves the bubbling of particulate emissions from thirteen sources. The following table lists the sources, the emission rates prior to the bubble and the emission rate being approved today.

ALLOWABLE PARTICULATE EMISSION RATES

[In pounds per hour]

Modeling No. and source	Allowable before bubble	Allowable after bubble	Proposed change
1 Spinning Mill	2.05	5.24	+3.19
2 Spinning Mill	3.11	9.61	+6.49
3 Product Recovery Unit	16.50	6.51	−10.00
4 Heated Dryer	6.74	3.97	−2.77
5 Heated Dryer	6.74	3.97	−2.77
6 Heated Dryer	6.74	3.97	−2.77
7 Heated Dryer	6.74	3.97	−2.77
8 Heated Dryer	6.74	3.97	−2.77
9 Heated Dryer	6.74	3.97	−2.77
10 Heated Dryer	6.74	3.97	−2.77
11 Heated Dryer	6.74	3.97	−2.77
12 Heated Dryer	6.74	3.97	−2.77
13 Heated Dryer	7.47	5.00	−2.47

Under the emission reduction scheme, du Pont is increasing the allowable emission rate of one spinning mill (SM-11) from 2.05 lbs/hr to 5.24 lbs/hr and the allowable emission rate of another spinning mill (SM-12) from 3.11 lbs/hrs to 9.61 lbs/hr. Both SM-11 and SM-12 are in violation of the current emission limit as determined by the North Carolina process weight table. The remaining eleven sources will be subject to allowable emission limits more stringent than those currently applied under the process weight table. In essence the approved du Pont bubble redistributes the allowable particulate emissions to permit two noncomplying sources to increase their allowable limits and thus come into compliance. This is permitted by EPA's Emissions Trading Policy Statement of April 7, 1982 (47 FR 15076).

It should be noted that actual emissions at the facilities generating the emission reduction credits to be used in this trade have been at a lower level historically than the allowable emissions level used as the baseline for calculating those credits. This in turn means that the real emissions increase that this bubble would permit at the two spinning mills would be offset by the amount by which actual emissions are already below allowable emissions at the facilities generating the credit.

This should not cause concern here, however, because the State has submitted an acceptable full-scale modeling analysis (described as Level III in the Policy Statement) showing that the bubble limits will adequately protect the ambient standards for particulate matter. In addition, EPA's Emissions Trading Policy Statement permits the use of allowable emission levels as the bubble baseline in an attainment area if proper consideration is given to the protection of PSD increment. The du Pont facility is located in an attainment area where the PSD baseline has not yet been triggered. Moreover, the State's submittal indicates that no increase in actual emissions will result from this bubble. Therefore, PSD increment will not be consumed.

The North Carolina Environmental Management Commission adopted this revision on May 12, 1983, after it had received a public hearing on March 4, 1983. EPA proposed to approve it on August 5, 1983 (47 FR 35672). No comments were received.

Action. Based on the foregoing, EPA is today announcing approval of the alternative emission reduction scheme permit for the E. I. du Pont de Nemours and Company facility in Kinston, North Carolina.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the North Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

(Sec. 110, Clean Air Act (42 U.S.C. 7410))

Dated: November 7, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart II—North Carolina

In § 52.1770 is amended by adding paragraph (c)(36) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * * *

(36) Bubble permit for E. I. du Pont de Nemours and Company, Kinston, submitted on May 18, 1983, by the North Carolina Department of Natural Resources and Community Development.

[FR Doc. 83-30857 Filed 11-15-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-9-FRL 2470-5]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rulemaking.

SUMMARY: In response to a request from the California Air Resources Board, this notice revises the attainment status designation of the Lancaster Area of Los Angeles County, California. The designation is changed from nonattainment to attainment for total suspended particulate matter. As a result, the ban on construction of major new or modified sources in this area is removed.

EFFECTIVE DATE: This action is effective January 16, 1984.

ADDRESSES: Information pertinent to the redesignation is available for public inspection during normal business hours at the EPA Region 9 office listed below and at the following locations:

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section (A-2-3), Air Management Division, Air Programs Branch, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, under paragraph 107(d)(2) of the Clean Air Act, as amended, EPA promulgated attainment status designations for all states (43 FR 8962). In California, EPA designated the Southeast Desert Air Basin (SEDAB) portion of Los Angeles County nonattainment for total suspended particulate (TSP) because of measured violations. This designation was recommended by the California Air Resources Board and supported by measured ambient air quality violations. Under paragraph 107(b)(5) of the Clean Air Act, a state may revise its designations of attainment status and submit them to EPA for approval and promulgation.

On June 29, 1982, EPA published a final action in the **Federal Register** (47 FR 28100) that reduced the TSP nonattainment area from the entire SEDAB portion of Los Angeles County to the Lancaster Urbanized Area. This action was proposed on December 12, 1981 and was prompted by a California Air Resources Board (ARB) redesignation request.

On April 7, 1983, the ARB requested that the Lancaster Area be redesignated to attainment for TSP. The ARB submitted data showing no violations of the National Ambient Air Quality Standards for TSP during 1981 and 1982.

EPA Actions

EPA is redesignating the Lancaster Area of Los Angeles County to attainment for TSP.

The ARB request to redesignate the Lancaster Area for TSP satisfies EPA's criteria for a redesignation to attainment. There are two years of violation-free air quality data and evidence of an implemented control strategy. The air quality data comes from the Lancaster monitoring site, which is the only site in the area. The criterion for evidence of an implemented control strategy is satisfied because there are federally enforceable rules limiting TSP emissions in effect. In addition, there are no major sources of TSP in the Lancaster Area. EPA therefore, concurs with the ARB request to redesignate the Lancaster Area to attainment for TSP.

EPA's approval of the above redesignation in California is being done without prior proposal because the redesignation is not controversial. The public should be advised that this approval action will be effective 60 days from the date this notice is published in the **Federal Register**. However, if notice is received by EPA within 30 days that someone wishes to submit adverse or critical comments, this approval action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Under Executive Order 12291, EPA must judge whether a rulemaking action is "major." Further, under the Regulatory Flexibility Act, EPA must assess the affect of the rulemaking action on "small entities." This action is not "major" because it approves State and local actions and imposes no new requirements. I hereby certify that the action will not have a significant economic impact on a substantial number of small entities.

Authority: Secs. 107(d) and 301(a), Clean Air Act, as amended, 42 U.S.C. 7407(d) and 7601(a).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 7, 1983.

William D. Ruckelshaus,

Administrator.

PART 81—[AMENDED]

Subpart C of Part 81 of Chapter I, Title 40 of Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

Section 81.305—California, in the Southeast Desert Area Basin, the Los Angeles County designation is amended:

§ 81.305 California.

* * * * *

CALIFORNIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Southeast Desert Air Basin (SEDAB)				
* * *	*	*	*	*
Los Angeles County (S.E. Desert Air Basin Portion):				
Lancaster Quartz Hill Area			X	
Non-Lancaster Quartz Hill Area				X
* * *	*	*	*	*
* * *	*	*	*	*

[FR Doc. 83-30861 Filed 11-15-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[Circular No. 2531]

Recreation Management; Prohibited Acts and Penalties

Correction

In FR Doc. 83–21718, beginning on page 36382, in the issue of Wednesday, August 10, 1983, on page 36386, in the first column, in § 8365.1–4, after paragraph (d) and before paragraph (f) the following paragraph (e) should be inserted:

"(e) Assaulting, committing a battery upon, or"

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6570]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program; Louisiana, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 3429, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Richard W. Krimm, Assistant Associate Director, Office of Natural and Technological Hazards Programs, (202) 287–0176, 500 C Street, Southwest, Donohoe Building—Room 506, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Louisiana: Livingston Parish	Albany, village of	220114B	Oct. 14, 1983, emergency, Oct. 14, 1983, regular	Apr. 12, 1974, Oct. 15, 1976, and Dec. 2, 1980.
New York: Orange	Harriman, village of	360618B	July 21, 1975, emergency, Sept. 1, 1983, regular, Sept. 1, 1983, suspended, Oct. 14, 1983, reinstated.	Mar. 8, 1974, and Nov. 21, 1975.
West Virginia: Wyoming	Pineville, city of	540220B	Jan. 22, 1975, emergency, Sept. 30, 1983, regular, Sept. 30, 1983, suspended, Oct. 14, 1983, reinstated.	July 26, 1974, and June 11, 1976.
Maryland: Cecil	Unincorporated areas	240019A	June 15, 1973, emergency, Apr. 4, 1983, regular, Apr. 4, 1983, suspended, Oct. 14, 1983, reinstated.	July 18, 1975.
Georgia: Fayette	Tyrone, town of	130493	Oct. 19, 1983, emergency	Do.
Wyoming: Goshen	Unincorporated areas	560022A	....do	July 19, 1977.
Missouri: Gasconade	....do	290801	Oct. 20, 1983, emergency	Do.
Pennsylvania:				
Chester	South Coventry, township of	421490B	Apr. 29, 1975, emergency, July 18, 1983, regular, July 18, 1983, suspended, Oct. 20, 1983, reinstated.	Oct. 18, 1974, and June 11, 1976.
Luzerne	Exeter, township of	420808B	Jan. 19, 1973, emergency, Sept. 15, 1983, regular, Sept. 15, 1983, suspended, Oct. 20, 1983, reinstated.	June 28, 1974, and May 21, 1976.
Illinois: Sangamon	Divenron, village of	170949A	Oct. 25, 1983, emergency	Sept. 8, 1978.
Florida: Sumter	Center Hill, city of	120615	....do	Do.
Illinois: Hardin	Elizabethtown, village of	170275B	July 2, 1975, emergency, Sept. 15, 1983, regular, Sept. 15, 1983, suspended, Oct. 25, 1983, reinstated.	Jan. 16, 1974, and Jan. 16, 1976.
Georgia: Oconee	North High Shoals, town of	130388A	Oct. 28, 1983, emergency	Aug. 19, 1977.
Illinois: Lake	Hawthorn Woods, village of	170366A	....do	Dec. 3, 1976.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Colorado: La Plata	Unincorporated areas	080097B	Dec. 12, 1974, emergency, Dec. 15, 1981, regular, Dec. 15, 1981, suspended, Oct. 28, 1983, reinstated.	June 3, 1977.
West Virginia: Wood	Williamstown, city of	540216	May 27, 1975, emergency, Oct. 18, 1983, regular, Oct. 18, 1983, suspended, Oct. 31, 1983, reinstated.	May 17, 1974, and Oct. 17, 1975.
Region II:				
New York:				
Nassau	Centre Island, village of	360461B	Oct. 18, 1983, suspension withdrawn	Aug. 9, 1974, and May 29, 1978.
Do	Mill Neck, village of	360481B	do	Mar. 8, 1974, and Aug. 20, 1976.
Region III:				
Pennsylvania:				
Allegheny	Indiana, township of	421070B	do	Sept. 6, 1974, and May 14, 1976.
Centre	Spring, township of	420269C	do	June 21, 1974, June 25, 1976, and Apr. 15, 1977.
Allegheny	West Deer, township of	421299B	do	Sept. 20, 1974, and June 25, 1976.
Region IV:				
North Carolina:				
Carteret	Morehead City, town of	370048	do	Feb. 16, 1977.
Do.	Newport, town of	370049	do	May 15, 1978.
Onslow	Swansboro, town of	370179	do	Mar. 26, 1976.
Region V:				
Illinois:				
Nassau	Metropolis, city of	170468D	do	Mar. 8, 1974, Jan. 23, 1976, Mar. 3, 1978, and May 1, 1981.
Lake	North Barrington, village of	170383B	do	Mar. 22, 1974, and Oct. 17, 1975.
Ohio:				
Jefferson	Irondale, village of	390741B	do	July 11, 1975, and Sept. 25, 1981.
Hamilton	North Bend, village of	390231B	do	Mar. 15, 1976, and May 7, 1976.
Adams	Rome, village of	390003A	do	July 25, 1975.
Region VI:				
Louisiana	St. Mary Parish Police Jury	220192B	do	Sept. 30, 1980.
Texas: Galveston	Santa Fe, city of	481562B	do	Apr. 8, 1971, July 1, 1974, June 24, 1977, and Sept. 2, 1980.

(National Flood Insurance Act of 1968 (title XIII, Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 4, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-30748 Filed 11-15-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Low Income Home Energy Assistance; Reallotment Report; Adjustment of Annual Median Income for Household Size

AGENCY: Office of the Secretary, HHS.

ACTION: Interim Rule with Request for Comments.

SUMMARY: The Department of Health and Human Services is publishing interim final regulations applicable to the Low Income Home Energy Assistance Program.

The amendment to § 96.81 changes one word of the section on reallotment reports such that it addresses obligations rather than expenditures. The inclusion of the term "expenditures" in the language of the regulation is erroneous. This change is necessary to bring this passage into agreement with the policy set out in the preamble to 45 CFR Part 96 and to eliminate confusion that might occur regarding the funds that can be carried over from one fiscal year to the next.

Section 96.85 is being added to provide a method for adjusting State median income to account for household size. Provisions in the Omnibus Budget Reconciliation Act of 1981 (OBRA) require the Secretary to promulgate the median income levels for the Low Income Home Energy Assistance Program and to provide for a method of adjustment for household size. When Title XX of the Social Security Act was amended in OBRA, applicable regulations pertaining to this adjustment (45 CFR 1396.60) were repealed October 1, 1981. This regulation reinstates the adjustment method.

DATES: Consideration will be given to written comments received on or before January 16, 1984.

ADDRESS: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B-448, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: David Siegel (202) 245–2637.

SUPPLEMENTARY INFORMATION: Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) Section 2607, provides for a process of reallotment of funds by the Secretary.

To determine the amount available for reallotment, § 96.81 of the current regulation erroneously states that States shall report to the Secretary on the amount of funds "* * * the State desires to remain available *for expenditure* in the succeeding fiscal year * * *" (emphasis added)

As we stated in the preamble to our final rules of July 6, 1982 (47 FR 29476), "The low-income home energy assistance block grant allows up to 25 percent of the funds to be held available for the following fiscal year, which we believe establishes a two-year limit on the permissible period of obligation."

Consistent with our policy of providing States with maximum flexibility under the statute, the intent of the original rule was to address funds remaining available for obligation, not expenditure.

This change does not represent a new rule, but a technical correction to make § 96.81 consistent with the policy expressed in the preamble to the block grant final rules.

Regulations regarding the promulgation of the median income for each State and the District of Columbia, and regulations for adjusting the median income to account for family size, were removed from 45 CFR Part 1396 when the interim final block grant regulations were published on October 1, 1981 (46 FR 48598). This action followed the removal of the State median income as an income eligibility requirement when Title XX of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981.

Title XXVI of Pub. L. 97–35, section 2605(b)(2)(B)(ii), establishes 60 percent of the median income for States as one measure of maximum income for eligibility for the Low Income Home Energy Assistance Program. State median income is defined as that promulgated by the Secretary, according to procedures established in section 2002(a)(6) of the Social Security Act as they were in effect on the day before the date of the enactment of the Pub. L. 97–35, adjusted in accordance with regulations prescribed by the Secretary to take into account the number of individuals in the households.

The factors in the new rule, 45 CFR 96.85, for adjusting median income according to household size are the same ones which were contained in 45 CFR 1396.60. The reference in section 2603(7) of Pub. L. 97–35 to procedures in effect on the day before Pub. L. 97–35 was enacted was taken as an indication of intent that all aspects of the promulgation of State median income should be as they were on the day before Pub. L. 97–35 was enacted.

Estimates of median income of four-person households for each State and the District of Columbia for fiscal year 1984 have been developed by the Bureau of the Census. In developing the median incomes, the Bureau of the Census used the following sources of data: (1) The March 1982 Current Population Survey; (2) the 1980 Census of Population Early National Sample; (3) per capita personal income estimates from the Bureau of Economic Analysis. A State-by-State listing of median income and 60 percent of median income for a four-person household for fiscal year 1984 is found below.

MEDIAN INCOME FOR FOUR PERSON HOUSEHOLDS: FISCAL YEAR 1984

State	Median income [1]	60 percent of median income [2]
Alabama	$22,443	$13,466
Alaska	35,834	21,500
Arizona	25,163	15,098
Arkansas	20,583	12,350
California	27,763	16,658
Colorado	28,756	17,254
Connecticut	31,108	18,665
Delaware	27,174	16,304
District of Columbia	28,312	16,987
Florida	23,504	14,102
Georgia	25,131	15,079
Hawaii	29,295	17,577
Idaho	22,821	13,693
Illinois	29,403	17,642
Indiana	24,832	14,899
Iowa	26,678	16,007
Kansas	24,842	14,905
Kentucky	22,409	13,445
Louisiana	26,144	15,686
Maine	22,201	13,321
Maryland	30,019	18,011
Massachusetts	28,839	17,303
Michigan	27,976	16,786
Minnesota	29,261	17,557
Mississippi	22,509	13,505
Missouri	25,339	15,203
Montana	24,953	14,972
Nebraska	24,835	14,901
Nevada	28,829	17,297
New Hampshire	25,332	15,199
New Jersey	30,793	18,476
New Mexico	21,488	12,893
New York	26,030	15,618
North Carolina	23,625	14,175
North Dakota	25,364	15,218
Ohio	26,851	16,111
Oklahoma	24,701	14,821
Oregon	24,516	14,710
Pennsylvania	26,519	15,911
Rhode Island	25,625	15,375
South Carolina	22,080	13,236
South Dakota	21,708	13,025
Tennessee	22,336	13,402
Texas	26,492	15,895
Utah	24,171	14,503
Vermont	23,551	14,131
Virginia	28,850	17,310
Washington	28,254	16,952
West Virginia	22,842	13,705
Wisconsin	27,232	16,339
Wyoming	27,553	16,532

Note.—The median income for a four person household in the 50 States and the District of Columbia, applicable to the period October 1, 1983 through September 30, 1984 is $26,274.

[1] Developed by the Bureau of Census from the March 1982 Current Population Survey, 1980 Census of Population Early National Sample and per capita income estimates from the Bureau of Economic Analysis.

[2] Prepared by the Social Security Administration, Office of Family Assistance.

The Social Security Administration finds that publication of a Notice of Proposed Rulemaking (NPRM) would be impractical and unnecessary under the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Since the policies implemented by these regulations are mandatory rather than discretionary, an NPRM would serve no useful purpose.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These proposed regulations involve no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations do not have a significant economic impact on a substantial number of small entities, therefore, a regulatory flexibility analysis, as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980 is not required.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Energy, Grant program—energy, Grant programs—social programs, Low and moderate income housing.

Authority: These regulations are issued under the authority of section 2603, 2605 and 2607 of Pub. L. 97–35; 95 Stat. 894, 896 and 900; 42 U.S.C 8622, 8624 and 8628.

(Catalog of Federal Domestic Assistance Program No. 13.818, Low Income Home Energy Assistance.)

Dated: June 27, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: October 3, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 96—[AMENDED]

Part 96, Subtitle A of Title 45 of the Code of Federal Regulations is amended as follow:

Section 96.81 is amended by revising paragraph (a) to read as follows:

§ 96.81 Reallotment report.

* * * * *

(a) The amount of the State's original allotment that the State desires to remain available for obligation in the succeeding fiscal year, not to exceed 25 percent of the original allotment; and

* * * * *

A new § 96.85 is added to read as follows:

§ 96.85 Adjustment of annual median income for household size.

In order to adjust the median income for each State published annually by the Secretary, the State median income for a four person household shall be adjusted for the number of individuals in the household by the following percentages:

(a) One person—52 percent;

(b) Two person household—68 percent;

(c) Three person household—84 percent;

(d) Four person household—100 percent;

(e) Five person household—116 percent;

(f) Six person household—132 percent; and

(g) For each additional household member above six persons, add three percentage points to the percentage for six person household.

[FR Doc. 83-30833 Filed 11-15-83; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-04; Notice 4]

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Safety Standard No. 205, *Glazing Materials,* to permit the installation of glass-plastic glazing as windshields and windows in motor vehicles and to establish appropriate performance requirements for such glazing. The existing requirements of the standard do not permit the use of glass-plastic glazing in areas necessary for driving visibility because the currently produced materials cannot meet the abrasion resistance requirements of the standard.

The agency has determined that glass-plastic glazing should be allowed because research data and limited field experience indicate that such glazing substantially reduces lacerative injuries when vehicle occupants strike windows and windshields in an accident. Although there are still certain concerns about potential problems with this type of glazing material, the agency believes these to be minor, and has concluded that the safety benefits derived from this material outweigh the possible problems. This amendment permits, but does not require, the use of glass-plastic glazing.

DATES: This amendment is effective on November 16, 1983. Any petitions for reconsideration of this rule must be received by December 16, 1983.

ADDRESS: Any petitions for reconsideration of this rule should be submitted to: National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Edward Jettner, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: Safety Standard No. 205, *Glazing Materials,* (49 CFR 571.205) specifies performance requirements for the types of glazing that may be used in motor vehicles, as well as the vehicle locations in which the various types of glazing may be used. The standard incorporates by reference the American National Standard "Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," Z26.1-1966 (ANS Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "Items" of glazing must pass. There are 13 "Items" of glazing for which requirements are currently specified in the standard. Currently, the only types of glazing that may be used in the windshield of motor vehicles are Item 1, Safety Glazing Material for Use Anywhere in a Motor Vehicle, and Item 10, Bullet Resistant Glass.

The windshield in all current vehicles is a "High Penetration Resistant" (HPR) windshield whose interior and exterior surfaces are made of glass, held together by an intervening layer or layers of plastic. When HPR windshields are impacted in an accident, both the inner and outer glass layers tend to break, leaving edges of broken glass on the inner surface (i.e., the side of the windshield facing the interior of the vehicle).

To alleviate the problem of lacerative injuries which result from this broken glass, manufacturers have experimented with windshields composed of laminated glass to which a layer of soft plastic is bonded on the inner side. Saint Gobain Vitrage of France has developed one such windshield called Securiflex, which has a layer of polyurethane on the inner surface. The Securiflex windshield has been demonstrated to reduce the risk of lacerations to car occupants who strike the window in an accident because the plastic inner layer prevents the occupant from coming into contact with the sharp glass edges that are formed when the glass is broken.

Although Securiflex has the potential for reducing many serious lacerative injuries, it cannot pass current Test No. 18, *Abrasion Resistance,* of Standard No. 205 when tested on the inner plastic side. The existing abrasion requirements were established in ANS Z26 prior to the development of glass-plastic glazing materials, such as Securiflex, and were geared specifically to symmetrical glass glazing. Since Securiflex cannot pass the current abrasion requirements, it may not be installed in motor vehicles manufactured in or imported into the U.S. at the present time.

In light of this fact, Saint Gobain petitioned the agency June 1980 to amend Standard No. 205 to permit the use of glass-plastic glazing, such as Securiflex, by establishing performance requirements that are appropriate for the special use characteristics of this new technology (i.e., the plastic inner layer of this material is not exposed to the harsher environment outside the vehicle).

In response to this petition, the agency issued an advance notice of proposed rulemaking on January 28, 1981, concerning possible performance requirements for glass-plastic glazing (46 FR 8067). Following further study and a review of the information received in response to the advance notice, on March 10, 1983, the agency issued a notice of proposed rulemaking to amend Standard No. 205 to permit the installation of glass-plastic glazing materials (48 FR 10097). The proposal specified performance requirements designed particularly for glass-plastic glazing, recognizing the varying environmental demands placed on the outer and the inner surfaces of this material. (For a complete understanding of the technical issues involved in this rulemaking, as well as a description of the specific performance requirements proposed, interested persons should consult both the advance notice and the notice of proposed rulemaking referred to earlier.)

As noted in the notice of proposed rulemaking, one of the primary issues in this rulemaking is whether the inner plastic side of glass-plastic glazing can adequately resist abrasion. Plastic does not resist the surface damage caused by rubbing and scraping as well as glass. Abrasion is a potential concern since it produces haze which scatters the light passing through the glazing in a way that can make it more difficult for the driver to see through the windows. Other issues which were discussed in the proposal included: The possible problem of delamination of glass-plastic glazing; rearview mirror attachment to the plastic surface of glass-plastic glazing; attachment and removal of decals in relation to the plastic side of glass-plastic glazing; and the effect of glass-plastic glazing on head impact forces (HIC values).

A majority of comments received in response to the proposal supported permissible use of glass-plastic glazing in all vehicle locations. These supporting comments unanimously cited the great potential of glass-plastic glazing for reducing lacerative injuries

in vehicle accidents, and stated that solutions can be found for the potential technical problems associated with this material. Several commenters, however, voiced serious concern about the level of stringency of the requirements (i.e., not high enough), outstanding technical issues, and quality control problems. These commenters urged further research and field testing prior to amending the standard to permit the use of glass-plastic glazing. Following is a discussion of the points raised in these comments, along with a discussion of the agency's analysis and conclusions.

Haze and Transmittance

From the outset of this rulemaking, one of the major concerns about glass-plastic glazing has been the ability of the inner plastic liner to resist abrasion which could lead to haze and loss of light transmittance, thereby reducing driving visibility. The proposal specified that glass-plastic glazing materials to be used in areas requisite for driving visibility must meet Abrasion Test No. 17, allowing a haze of only four percent after 100 cycles of controlled laboratory abrasion.

Several commenters pointed out that there is still no clear relationship between haze and driver visibility (i.e., when haze becomes a safety factor), and stated that the levels specified in the proposal were only abritrary levels. DuPont questioned what it calls a relaxation of the standard's requirements (HPR windshields must meet a 2 percent haze maximum after 1,000 cycles of the Taber abraser).

The agency believes that different test procedures and performance requirements set for glass-plastic glazing are appropriate given the differences in actual exposure between the inner plastic liner and the glass side of the windshield. The inner plastic liner will not experience the same exposure to outdoor environmental conditions that the glass side of this glazing will encounter. Therefore, the abrasion requirements for the two sides are not equivalent and the 2-percent limitation specified for the glass cannot be compared to the specification for the plastic inner liner (i.e., the latter should not be considered a "relaxation").

The specified abrasion requirement for the plastic side of glass-plastic glazing was tailored to the requirement for this type glazing specified by the Economic Commission for Europe (ECE) in ECE Regulation 43, which is currently recognized in some form by 20 European countries. The agency has also obtained data describing haze build-up on Securiflex windshields in use in Europe (Docket No. 81-04-N01, Entry 03A) as well as data that describe haze build-up and loss of transmittance of standard HPR windshields in the United States (Docket No. 81-4-N01, Entry 048). These data indicate that Securiflex windshields tested to ECE Regulation 43 are, in actual use, no less durable than ordinary windshields. In light of the test data currently available, the agency believes that the 4 percent test limitation specified in the proposal for the plastic liner of glass-plastic glazing is sufficient to minimize the loss of transmittance and to provide adequate driving visibility. However, the agency does solicit any information or data that any party may obtain in the future concerning the relationship between haze build-up and driving visibility. The agency also intends to monitor closely this aspect of glass-plastic glazing performance as this product is introduced in the market. If future information indicates that changes in the abrasion requirements are necessary, the agency will, of course, take appropriate action.

Discoloration

The plastic side of glass-plastic glazing is susceptible to chemical alteration (becoming yellow or cloudy) when exposed to intense and prolonged ultraviolet radiation. Chrysler Corporation cited tests it conducted in the Arizona desert in which a glass-plastic windshield was exposed to direct sunlight for two years. Chrysler stated that the test results showed that the plastic surface became etched, hazy and translucent after one year of exposure. That company argued that the proposed requirements will not ensure that glass-plastic material performs satisfactorily throughout the wide range of environmental and usage conditions it will encounter in the United States. PPG Industries also stated that the test procedure included in the proposal for weathering is insufficient because the ultraviolet radiation in the test is only directed against the glass side of glass-plastic glazing.

The agency believes that the Chrysler test involved a much more severe exposure to the sun than glass-plastic windshields would experience in actual use, because the plastic side of the windshield would be inside the vehicle and receive little direct ultraviolet exposure in most cars. The amount of ultraviolet light that will actually pass through the windshield to the inside layer of plastic should be minimal, since test data provided by DuPont indicate that the plastic inner layer in HPR windshields acts as an effective filter for ultraviolet light.

The agency also believes that the proposed weathering test procedures (i.e., direct ultraviolet exposure of the exterior surface of the windshield and not the interior plastic surface) of Test No. 16 is the best simulation of the exposure the windshield will receive when it is installed in a car. Thus, the agency has decided not to adopt PPG's recommendation for changing the test procedure.

The agency is, however, concerned about the potential exposure of the plastic side of the windshield in convertibles and vehicles that have no or removable tops. While the agency believes that a prolonged test directing ultraviolet radiation against the plastic side of the glazing would be overly stringent, it does believe that it may be appropriate to set some requirement for directing ultraviolet radiation against the plastic-side of glass-plastic glazing for use in convertibles or cars with no or removable tops. At this time, the agency lacks the necessary data to support such a requirement. As an interim solution, the agency has decided to prohibit the use of glass-plastic glazing in those vehicles until such data are available. This prohibition does not apply to the use of glass-plastic glazing in vehicles with sun roof or T-tops. The probability that the plastic side of the glazing in those vehicles would be directly exposed to the sun over a prolonged period is particularly small due to the installation angle of the windshield and restricted path of the sunlight through the opening in the top of the vehicle.

Commenters also raised questions about the susceptibility of glass-plastic glazing to deterioration resulting from exposure to some chemicals. Since glass-plastic glazing would be exposed to various cleaning agents, the proposal included Test No. 19, *Chemical Resistance*, to ensure that inferior plastic materials are not used in glass-plastic glazing. Libby-Owens-Ford said that in its tests, glass-plastic materials were damaged when exposed to one commercial glass cleaner. Information provided by the Maryland State Police, however, indicates that they have used commercial glass cleaners on their glass-plastic windshields without problems. Because of potential problems that may be associated with some commercial glass cleaners, the agency has added an additional generic formula, typical of several chemical glass cleaners, including the one used in the Libby-Owens-Ford test, to the list specified in the chemical resistance test to simulate the use of commercial glass cleaners.

Frost Removal

There has been some concern that the plastic side of glass-plastic glazing could become overly abraded by the scraping action of vehicle owners in the removal of frost. Transport Canada recently conducted a study of this problem and determined that the plastic surface of the glass-plastic samples tested did not develop haze levels in excess of 2 percent when subjected to frost removal scrapings. (See Docket No. 81–04–N03, Entry 13.) The tests did show that the plastic samples did receive fine scratches from the scraping and several commenters argued that this indicates that there is still a serious problem. The agency disagrees and believes that the low haze level is within acceptable limits. If owners remove frost with plastic scrapers, the agency does not expect there to be any noticeable degradation of visibility through this glazing. Since the cleaning instruction label will instruct owners on the proper method of frost removal, there should be no problem.

Decal Removal

There has also been concern that the plastic surface of the subject glazing could be cut or abraded during the process of removing decals from the windshield (e.g., removing of state inspection stickers). The proposal discussed this problem and noted that, as one possible solution, special decals could be produced which could be peeled off easily without the use of damaging tools. Several vehicle manufacturers mentioned this problem and discussed other possible solutions. General Motors suggested that a "free corner" could be provided on the lower surface of the windshield to allow a small area of exposed glass (i.e., no plastic) which would serve as a decal mounting zone. Ford said that it had experimented with a plastic mounting which would be placed over the plastic inner liner of glass-plastic windshields on which the decals could be attached.

The agency believes that all of these suggestions are possible solutions to this potential problem, and that manufacturers should be allowed to experiment with various methods. Consequently, no specific requirements regarding decal placement are included in this rule. The agency does not believe that the potential problem is insurmountable or so great that it should preclude the use of glass-plastic glazing. Since decals are ordinarily placed where they don't obstruct the driver's view of the road ahead, any damage that does result from decal removal would also not block that view.

Mirror Attachment

The notice of proposed rulemaking discussed the potential difficulty of attaching rearview mirrors to the plastic side of glass-plastic windshields, because of problems of adherence. As noted in the proposal, a review of technical material presented in SAE Paper 770246 (Docket 81–04–N01, Entry 009) indicates that this is not an insurmountable technical problem. The agency also noted that St. Gobain is recommending an acrylic adhesive material for mirror attachment.

General Motors currently has a test fleet of 2,500 vehicles equipped with Securiflex windshields which have been in the field for several months. General Motors does report that three mirrors have fallen off in this test fleet and attributes this occurrence to poor adhesion of the mounting button to the plastic (the adhesive used was that recommended by St. Gobain). General Motors stated that if the adhesion cannot be improved, it may necessary to provide a hole in the inner plastic liner so that the mirror button can be attached directly to the glass, using current production methods. The agency believes that this is a viable alternative. Also, the mirror could be attached directly to the windshield header rather than to the windshield, as was typically done in all production vehicles ten years ago. Since Standard No. 111, *Rearview Mirrors*, requires all mirrors to have breakaway mountings, there should not be a safety difference in placing the mirrors directly on the windshield or on the windshield header. Although either of these alternative solutions would involve some slight additional costs, the agency believes they offer a technically feasible solution should they become necessary. No commenters suggested that the rule should not go forward because of potential difficulties in this area.

Delamination

To ensure that the inner plastic layer of glass-plastic glazing materials does not separate (delaminate) from the glass layer during use, the notice of proposed rulemaking specified that these materials must pass test No. 28, *Resistance to Temperature Change*. This procedure involves the testing of 12-inch by 12-inch specimens by exposing them to extremely cold and hot temperatures (−40 to +161 degrees Fahrenheit) to determine whether the plastic will delaminate from the glass. Several commenters stated that this test procedure is inadequate because the small test samples do not simulate the performance of entire windshields. These manufacturers argued that the stress placed on glass-plastic glazing when molded into windshields (i.e., the curvature) can cause delamination in certain glass-plastic material which is not evident when small, flat samples are tested. General Motors also noted that it would not market glass-plastic windshields without conducting the delamination tests on the entire windshields, regardless of the requirements of the standard.

The agency had given careful consideration to these comments. However, the agency believes that this concern is primarily a quality control consideration for the manufacturer of the windshield, since delamination is not directly related to safety, unless there are instantaneous delaminations while a vehicle is being driven. The agency believes that the tests specified in the proposal and included in this final rule are adequate to ensure the minimum performance of glass-plastic glazing in terms of delamination resistance. In addition to Test No. 28, this rule includes two other tests that relate directly to delamination. Test No. 3, *Humidity*, investigates the behavior of the laminated construction when exposed to high levels of moisture (100 percent relative humidity). Test No. 4, *Boil Test*, evaluates laminated materials when exposed to tropical temperatures. The agency believes that this combination of tests is adequate to ensure that low quality glass-plastic material will not be produced, even though the tests involve small samples. It should be noted that Test No. 28, *Resistance to Temperature Change*, is not currently specified under the standard for Item 1 HPR windshields. This additional test is specifically added to ensure the integrity of glass-plastic material in terms of delamination resistance.

Flammability and Toxicity

The notice of proposed rulemaking included a specific degree of flame resistance, Test No. 24 PPG Industries stated that this test may not be sufficient because it does not measure the possibility of toxicity or dense smoke which can result from the burning of some plastics. The agency has considered this comment but does not believe that will represent a real problem and with glass-plastics that comply with Test No. 24. For example, the Maryland State Police (MSP) reported to the agency that there was a fire in one of their vehicles equipped with a Securiflex windshield. MSP said that an examination of the windshield after the fire showed that the inner

plastic liner was self-extinguishing. Further, the time required to egress from a burning vehicle is sufficiently short that toxicity should not be pertinent. The agency does intend, however, to monitor glass-plastic windows that may be introduced in the market in terms of this consideration.

General Motors also questioned whether Test No. 24 (specified for thick plastic materials), which was specified in the proposal, should be included rather than Test No. 23 (specified for thin plastic materials). That company also suggested that Safety Standard No. 302, *Flammability of Interior Materials*, may be sufficient to ensure adequate flame resistance in glass-plastic glazing.

The agency specified Test No. 24, rather than 23, because the overall construction of glass-plastic glazing is "thick" not "thin". Test No. 24 will evaluate the burning behavior of the plastic inner liner as it is bonded to the windshield glass, and the agency believes this is a more appropriate test then Test No. 23.

Relying on Safety Standard No. 302 to ensure the flame resistance of glass-plastic glazing is not possible since that standard only applies to vehicles and does not cover items of aftermarket equipment. Safety Standard No. 205 is an equipment standard and the inclusion of Test No. 24 will ensure that the glass-plastic glazing manufacturer has analyzed the flame resistance of its product.

Head Injury Criterion (HIC)

The notice of proposed rulemaking noted that some data indicate there may be somewhat higher occupant HIC values in crashes with glass-plastic windshields (HIC values are calculated from readings from instrumented dummies involved in barrier crash tests and are a measuring tool used to assesss the injury producing effects of crash). Data reported by Patrick and Chou (Docket No. 81–04–N01, Entry 009) show graphically that the "best fit" curve of HIC values for glass-plastic glazing is approximately 100 units higher than the comparable curve representing the standard HPR windshield. Libby-Owens-Ford and PPG stated concern about this matter and suggested the need for additional testing. No commenter suggested a specific HIC value requirement that should be included in the standard at the current time.

Ford Motor Company stated that it had analyzed the data used by Patrick and Chou and found no statistically significant differences in anthropomorphic test device HIC response due to differences in windshield type. GM also reported that the only test it had run to date with a glass-plastic windshield produced a HIC considerably lower than an equivalent test of a windshield without the inner plastic liner. In addition, Volkswagen reported that in all of its tests the HIC values with Securiflex windshields were lower than those with conventional windshields.

Currently, the cost of glazing and vehicle production (including fuel economy considerations) favors glazing of the minimum acceptable thickness and weight. This will help to ensure that very thick plastic coatings are not used on glass-plastic windshields, which could possibly lead to increased HIC values. The agency is not including any dynamic testing for glass-plastic windshields at the current time, since the available data show that glass-plastic glazing apparently does not adversely affect HIC values. In fact, test data supplied by some commenters show lower HIC values with glass-plastic glazing. The agency will continue to evaluate this aspect of glazing performance, however, as glass-plastic glazing is introduced into the market.

On a related issue, DuPont noted that the proposed definition of glass-plastic glazing would allow glass-plastic laminates containing only one sheet of glass, and states that this radical departure from existing windshield construction could lead to unforeseen safety problems. Existing windshields are laminates of glass-plastic-glass. Securiflex is constructed of a typical windshield laminate with an extra layer of bonded plastic.

The agency does intend to allow glass-plastic constructions of only two layers if manufacturers choose to develop such designs. Such constructions could potentially be very beneficial in terms of reducing lacerations and ejections, while at the same time possibly reducing vehicle weight and cost. The agency is aware that certain manufacturers are already experimenting with two-ply constructions which show much promise. The NHTSA does not wish to squelch innovation in this area by restricting the construction of glass-plastic materials, and believes that the specified performance requirements will ensure that inferior materials are not produced (e.g., two-ply materials would have to meet the impact resistance test specified in this rule for glass-plastic materials).

Lacerations

Libby-Owens-Ford and PPG expressed concern that no performance requirement was included in the proposal to measure the anti-lacerative characteristics of glass-plastic glazing. These commenters are concerned that brittle plastics could be used which might actually increase lacerations. The agency does not believe this is a valid concern because there is no reason a manufacturer would choose to use a hard plastic of such thickness that it would be brittle.

Moreover, no reliable laceration test currently exists. The gathering of extensive field experience is absolutely essential before a sound, realistic and reproducible laceration test can be developed, if it is determined one is even needed. The SAE Glazing Committee established a task force which worked for several years, without success, trying to articulate a laceration test.

The agency believes that the existing data regarding glass-plastic glazing thoroughly establishes its great anti-lacerative potential. Sled-test crash simulations using test dummies having chamois-covered heads clearly indicate that glass-plastic constructions eliminate virtually all lacerations. Further, in spite of the short time period and small number of cars in the current field evaluation projects underway, there are already two real-world crash experiences which dramatically demonstrate the anti-lacerative properties of glass-plastic windshields. The Maryland State Police have a test fleet of 100 vehicles equipped with Securiflex windshields. One of their patrolmen was involved in a serious accident in which the officer's head struck and broke the windshield, yet no lacerations occurred on his face. General Motors has a rental test fleet of 2,500 vehicles equipped with Securiflex windshields. General Motors has told the agency that it is aware of 11 crashes in which an occupant struck the windshield. General Motors reported that none of the occupants in those cars suffered lacerations caused by the cutting action of broken windshield glass. The agency believes that this experiece and the other existing data concerning the anti-lacerative properties of glass-plastic glazing justify allowing this material at the current time even though no laceration index or test is currently available. (It should be noted that there is also no laceration test for existing HPR windshields; it is known that these windshields cause thousands of lacerative injuries each year).

Ford Motor Company requested a clarification in the test requirements for glass-plastic glazing to specify that in conducting Test No. 2, *Luminous Transmittance*, data obtained from Test

No. 1, *Light Stability*, rather than Test No. 16, *Weathering*, should be used. Ford's point is that in testing glazing, Test No. 1 would precede Test No. 16. Hence, the data from Test 1 would be available for use in Test No. 2. Ford argues that the outcome of Test No. 2 would be unaffected by which test data are used, but that this clarification would simplify test procedures. The agency agrees with Ford's assessment, and this clarification is included in this rule.

General Motors suggested that the term "coated glass" be used instead of "glass-plastic" glazing, in case coatings other than plastic are used in the future. The agency does not believe it is necessary to make such a change at the current time since "glass-plastic" is being used in the industry and is totally descriptive of existing and expected technology.

General Motors also requested that manfuacturers be given the option of providing a shorter, permanently etched message on the windshield glass, rather than the cleaning instruction label specified in the proposal, to alert owners regarding the proper cleaning methods for glass-plastic windshields. The agency believes that the cleaning instruction label specified in the proposal is necessary because it would contain more information than would be possible with a permanently etched, short message. The cleaning instruction label included in this rule would identify the product, specify instructions and agents for cleaning the material that will minimize the loss of transparency and instructions for removing frost and ice. The agency recognizes the value of having a permanently etched message on the glass-plastic glazing that refers drivers to the owner's manual for cleaning instructions. Thus, the agency will permit the optional use of permanent labels and urges manufacturers to use them in addition to the cleaning instruction label required by this rule. The agency will continue to monitor the field experience of glass-plastic glazing to determine whether a permanent label should be required.

The agency has determined that there is good cause for an immediate effective date for this rule because it will remove a restriction by permitting, but not requiring, manufacturers to install glass-plastic glazing in all windows of motor vehicles. The agency believes this technology will reduce thousands of lacerative injuries each year. Consequently, an immediate effective date is in the public interest.

The agency has examined the impacts of this amendment and determined that this notice is not major within the meaning of Executive Order 12291 or significant according to the Department's regulatory policies and procedures. The agency has prepared a final regulatory evaluation concerning the amendment, which has been placed in the public docket. (A free copy may be obtained by contacting the Docket Section). The agency estimates that the consumer cost of glass-plastic glazing would be greater than existing laminated or tempered glass, although it is not possible to determine the exact increase in cost at the current time because this material is not being marketed. The agency estimates, however, that costs could be $38 to $45 greater for glass-plastic windshields. It should be noted that this rule will allow the use of glass-plastic glazing, but not require its use. Therefore, any increase in cost would be determined by the number of manufacturers which choose this alternative material for certain windows in their vehicles. The agency has determined, however, that cost increases to consumers would not be significant within the meaning of Executive Order 12291. Moreover, any increase in cost for this material would be offset to a certain extent by the savings which would accrue because of reduced lacerative injuries resulting from the installation of glass-plastic glazing (with the concomitant reduction in medical and insurance costs).

The agency has also considered the impacts of this rule under the Regulatory Flexibility Act. Few, if any, motor vehicle manufacturers would qualify as small entities. Small organizations or governmental units that purchase vehicles equipped with glass-plastic glazing might have to pay a slightly higher price, but this option and its cost increase would be somewhat offset by the accruing savings discussed above. This amendment could have some economic impact on small glazing manufacturers and glazing dealers that would be considered small entities for purposes of the Act. If glass-plastic glazing were to become popular, these small entities might be forced, through competition, to stock the new glazing in their inventories, to provide safe and secure types of storage, to develop new material handling procedures (to protect the plastic inner liners), and to develop new shipment procedures. These possible impacts are all speculative at the current time since the agency has no information to detemine how many manufacturers would choose the option of producing and installing glass-plastic glazing, and no information on the magnitude of the above possible impacts or on the likelihood of their occurrence. Based on the agency's judgments regarding information that is currently available, I certify that the option included in this rule would not have a significant economic impact on a substantial number of small entities.

As noted earlier, General Motors, the Maryland State Police, and Ford Motor Company currently have (or will have) test fleets of vehicles equipped with glass-plastic windshields. Experience with these test fleets may provide more information in the future concerning any additonal handling costs that are necessary to protect glass-plastic glazing materials. The agency will monitor these impacts as glass-plastic glazing is introduced in the market.

The NHTSA has also examined this rule under the National Environmental Policy Act. The agency has determined that the included option will not have a significant impact on the quality of the human environment. If manufacturers choose this option in large numbers, there could be some slight increase in plastics consumption, but this would not create any significant impact.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205) is amended as set forth below.

§ 571.205 [Amended]

1. Paragraph S4 is amended to add the following definition:

* * * * *

"Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

* * * * *

2. Existing paragraph S5.1.2.3 is designated S5.1.2.4 and revised to read as follows:

S5.1.2.4 *Cleaning instructions.* (a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2 or S5.1.2.3 shall affix a label, removable by hand without tools, to each item of such glazing materials. The label shall identify the product involved, specify instructions and agents for cleaning the material that will minimize the loss of transparency and instructions for removing frost and ice and, at the option of the manufacturer, refer owners to the vehicle's Owner's

Manual for more specific cleaning and other instructions.

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraph 5.1.2.3 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more then ¼ inch high, the following words, "GLASS PLASTIC MATERIAL—SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS."

3. A new paragraph S5.1.2.3 is added to read as follows:

S5.1.2.3 Item 14—*Glass-Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.4 and Tests No. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in (a), (b), (c), and (d) of this paragraph, may be used anywhere in a motor vehicle, except that it may not be used in convertibles, in vehicles that have no roof or in vehicles whose roofs are completely removable.

(a) Tests Nos. 9, 16, and 18 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 17, 19, 24, and 26 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle. Test No. 15 should be conducted with the glass side of the glazing facing the illuminated box and the screen, respectively. For Test No. 19, add the following chemical to the specified list: an aqueous solution of isopropanol and glycol ether solvents in concentration no greater than 10% or less than 5% by weight and ammonium hydroxide no greater than 5% or less than 1% by weight, simulating typical commercial windshield cleaner.

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40°C(±5°)(−40°F±9°) for a period of 6 hours at the commencement of Test No. 28, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

(c) Glass-plastic specimens tested in accordance with Test No. 17 shall be carefully rinsed with distilled water following the abrasion procedure and wiped dry with lens paper. After this procedure, the arithmetic mean of the percentage of light scattered by the three specimens as a result of abrasion shall not exceed 4.0 percent.

(d) Data obtained from Test No. 1 should be used when conducting Test No. 2.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.7)

Issued on November 9, 1983.

Diane K. Steed,

Deputy Administrator.

[FR Doc. 83-30792 Filed 11-10-83; 4:36 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1175 and 1176

[Ex Parte No. 429]

Elimination and Modification of Certain Securities Regulations; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules and application requirements and issuance of final policy statement; correction.

SUMMARY: At 48 FR 26317, June 7, 1983, the Commission adopted its proposal to eliminate certain securities regulations and modify others. The rules removed Part 1176, and relieved motor carriers of the regulations in Part 1175. Paragraph (c) and an Appendix were inadvertently omitted from the text of revised § 1175.10, and that error was corrected at 48 FR 30639, July 5, 1983. This notice corrects an inadvertent error made in that correction notice.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245, or John J. Mattras, (202) 275-7677.

SUPPLEMENTARY INFORMATION: At 48 FR 30639, paragraph (c) of § 1175.10 is corrected by revising the words "49 U.S.C. 1170.3(e)" to read "the Commission's Rules of General Applicability."

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-30868 Filed 11-15-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 645 and 658

[Docket No. 31004-198]

Stone Crab Fishery and Shrimp Fishery of the Gulf of Mexico; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; correction.

SUMMARY: This document corrects the docket number given to an emergency rule amending the Fishery Management Plans for the Stone Crab Fishery and Shrimp Fishery of the Gulf of Mexico that was published on October 11, 1983, 48 FR 46057.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, 202-634-7432.

The correction is made in FR Doc. 83-27562, page 46057, column 2 in the heading. "Docket No. 31004-197" should be changed to "Docket No. 31004-198."

Dated: November 10, 1983.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 83-30877 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 222
Wednesday, November 16, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 424

[Amdt. No. 4]

Rice Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Rice Crop Insurance Regulations (7 CFR Part 424), effective for the 1984 and succeeding crop years by: (1) Changing the policy to make it easier to read; (2) adding volcanic eruption as an insurable cause of loss; (3) eliminating the reduction in production guarantee for unharvested acreage and related provisions; (4) providing that acreage destroyed in compliance with any U.S. Department of Agriculture or State program is uninsurable; (5) allowing rice to be followed by rice if the rotation requirements are carried out, as designated by the actuarial table; (6) adding a provision making rice planted with another crop uninsurable; (7) permitting the determination of indemnities based on the acreage report rather than at loss adjustment time; (8) providing for a coverage when the insured does not select one; (9) providing procedures for reporting a loss when a loss is probable; (10) adding a 60-day claim for indemnity provision; (11) removing the reference to No. 3 rice and providing the conditions under which rice will be eligible for quality adjustment, (12) adding a section regarding appraisals following the end of the insurance period; (13) adding a hail/fire provision for appraisals of uninsured causes of loss; (14) changing the cancellation/termination dates to conform with farming practices; (15) providing that any change in the policy will be available in the service office by a certain date; (16) adding a definition of "service office;" (17) providing for unit determination when the acreage report is filed; (18) adding a section concerning "descriptive headings;" (19) adding a provision that provides for crop insurance coverage on rice to be based soley on actual production records and computing the average yield by using the individual production record, actual or established, over a base period, (20) revising the unit definition to conform to ASCS farm serial numbers; and (21) removing the present provision regarding the insurability of a second rice crop in the same crop year.

In addition, FCIC proposes to issue a new subsection in the rice crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring rice in accordance with Secretary's Memorandum No. 1512–1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

DATE: Written comments on this proposed rule must be submitted not later than January 16, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agricultural, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

FCIC proposes to make changes to the rice crop insurance policy to provide insurance coverage for rice based solely on actual production records of the producer instead of the previous method of establishing coverage based on area data. This method of determining coverages has been strongly urged in recent years by producers and commodity groups who feel that basing yield guarantees for rice insurance on actual production will assure that those yields reflect the true production capacity of each producer. On June 21, 1983, the Board of Directors of FCIC approved making the actual yield production history a basis for yield guarantees beginning in the 1984 crop year. Prior to that date several meetings were held with producers and community group discussing these changes. The proposed method of using the actual production history also addresses a common complaint among insured producers that their individual yields are far superior to the area yield data on which present guarantees are based. FCIC also proposes to implement a new premium adjustment table in the rice crop insurance policy to shift the emphasis from premium adjustment based on severity (loss ratio) to frequency of loss. A premium adjustment factor is determined by: (a) Computing the average yield by using the individual production record, either actual or established, for a base period, (b) multiplying the average yield times the elected level of coverage to establish

the guarantee, and (c) comparing the actual yield by year to the guarantee. Any year in which the actual yield falls below the guarantee is considered a "loss year." The number of loss years occurring determines the premium adjustment factor. FCIC also proposes to revise the definition for county, new ground, and unit.

For the 1984 crop year, FCIC will determine the premium adjustment factor on a 5-year period (1978–1982). Determining the actual yields for comparison purposes prior to 1978 is considered to be impractical. Using the 5-year period, the maximum number of loss years would be 5. After the 1984 crop year 1978 will continue to be the first year of the base period until a base period of ten years has been reached.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 424

Crop insurance, Rice.

PART 424—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Rice Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 424 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (1506, 1516).

2. 7 CFR Part 424 is amended in the Table of Contents thereof by removing the word "Reserved" from Section 424.3 and inserting, in its place, the words "OMB control numbers."

3. 7 CFR 424.3 is added to read as follows:

§ 424.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 424) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

4. 7 CFR 424.7(d) is amended by revising the Rice Crop Insurance Policy therein as follows:

§ 424.7 The application and policy.

* * * * *

(d) * * *

Department of Agriculture Federal Crop Insurance Corporation, Rice; Crop Insurance Policy

This is a continuous contract.

Refer to Section 15.

Agreement to insure: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions (excluding drought);

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake; or

(7) Volcanic eruption;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We shall not insure against any loss of production due to:

(1) Application of saline water;

(2) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(3) The failure to follow recognized good rice farming practices;

(4) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project;

(5) Any cause not specified in section 1a as an insured loss;

(6) The failure to carry out a good irrigation practice, except failure of the water supply after planting due to an unavoidable cause; or

(7) The breakdown of irrigation equipment or facilities.

2. Crop, Acreage, and Share Insured.

a. The crop insured shall be rice which is planted for harvest as grain and which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be rice planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured rice at the time of planting.

d. We do not insure any acreage:

(1) On which rice was destroyed to comply with any other United States Department of Agriculture or state program;

(2) Which does not meet the rotation requirements designated by the actuarial table;

(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is not irrigated;

(5) Which is destroyed and we determine it is practical to replant to rice and such acreage was not replanted;

(6) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(7) Of volunteer rice;

(8) Planted to a type or variety of rice not established as adapted to the area or excluded by the actuarial table; or

(9) Which you have elected to exclude (the exclusion must be by unit, in writing, on our form, and made before the closing date for submitting applications as established by the actuarial table), except that, if a unit is acquired after such date, an exclusion may be filed up to 15 days after the acquisition but not later than the acreage reporting date; or

(10) Planted with a crop other than rice.

e. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice. You shall report on our form:

a. All the acreage of rice in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any rice planted in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

Number of [2] loss years	0	1	2	3	4	5+
Percentage adjustment.....	80	100	115	135	165	200

[1] The experience period used for determining the number of "loss years" for the 1984 crop year shall be the 5-year period beginning with the 1978 crop year and extending through the 1982 crop year. (For the 1984 crop year.) The experience period will expand each year until a 10 year base period is reached.

[2] A "Loss Year" is defined as a year in which the yield actual or established, is below the production guarantee for the unit or practice (where the unit consists of more than one practice).

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt. Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period. Insurance attaches when the rice is planted and ends at the earliest of:

a. Total destruction of the rice;

b. Combining, threshing or removal from the field;

c. Final adjustment of a loss; or

d. October 31 of the calendar year in which rice is normally harvested.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the rice on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the rice and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice shall be given and a representative sample of the unharvested rice (at least 10 feet wide and the entire length of the field) shall be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the rice on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the rice which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the rice on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of rice on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rice to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production including any production from a second rice crop harvested in the same crop year.

(1) Mature rough rice production which otherwise is not eligible for quality adjustment shall be reduced in volume by .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(2) Mature rough rice production which, due to insurable causes:

(a) Has a total milling yield (heads, second heads, screening and brewers) of less than 68 pounds per hundreweight;

(b) The whole kernel weight is less than 55 pounds per hundredweight for medium and short grain varieties;

(c) The whole kernel weight is less than 48 pounds per hundredweight for long grain varieties;

(d) Contains more than 4.0 percent chalky kernels in long grain varieties;

(e) Contains more than 6.0 percent chalky kernels in medium or short grain varieties;

(f) Contains more than 3.0 percent chalky kernels in other types; or

(g) Contains more than 2.5 percent red rice shall have the production adjusted by:

(i) Dividing the value per pound of such rice by the price per pound of U.S. No. 3 rough rice; and

(ii) Multiplying the result by the number of pounds of such rice.

(The applicable price for No. 3 rough rice shall be the nearest milling center price on the earlier of the day the loss is adjusted or the day the rice was sold).

(3) Any mature production from volunteer rice growing in the rice shall be counted as rice on a weight basis.

(4) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good rice farming practices;

(b) Not less that the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of rice becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) We may determine the amount of production of any unharvested rice on the basis of field appraisals conducted after the end of the insurance period.

(7) When you have elected to exclude hail and fire as insured causes of loss and the rice is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

(8) The commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C.. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the rice is planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud. We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to

collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share. If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of Indemnity. You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.) Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and Access to Farm. You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all rice produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
Missouri	Apr. 15
Florida and Texas	Mar. 15
All other states	Mar. 31

If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved; the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract Changes. We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms. For the purposes of rice crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding rice insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but not physically located in the county.

d. "Crop year" means the period within which the rice is normally grown and shall be designated by the calendar year in which the rice is normally harvested.

e. "Harvest" means the completion of combining or threshing of rice on the unit.

f. "Insurance acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Mill Center" means any location in which two or more mills are engaged in milling rough rice.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Second crop rice" means regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the rice or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of rice in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if we determine that the reconstitution was made in whole or part to defeat the purpose of the Federal Crop Insurance program and/or to gain disproportionate advantage under this policy. Errors in reporting such units may be corrected by us when adjusting a loss.

n. "Yield" means the actual yield reported by you to ASCS or the yield established by ASCS or us.

18. Descriptive Headings. The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations. All determinations requied by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices. All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on September 13, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: November 7, 1983.

[FR Doc. 83-30743 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1290

[Docket No. FRCI-1]

Floral Research and Consumer Information; Decision on Proposed Order and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes an order which authorizes a nationally coordinated research and promotion program, and provides for a referendum on the order among affected producers and importers.

The proposed order would establish a "Floraboard" of producers and importers for local administration. The program would be financed by an assessment on certain flowers and plants. Producers and importers who did not wish to contribute would be entitled to a refund upon written request.

DATES: Referendum Period November 28, 1983–January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 475–3929.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Pre-notice press release—Issued nationwide on August 25, 1982; Notice of Hearing—Issued October 7, 1982, and published October 12, 1982 (47 FR 44735); Supplemental Notice of Hearing—Issued November 2, 1982, and published November 4, 1982 (47 FR 49974); Recommended Decision—Issued June 23, 1983, and published July 5, 1983 (48 FR 30650); Proposed Procedure for Referenda and Rules of Practice for Modification or Exemption—Issued July 19, 1983, and published August 3, 1983 (48 35116); and Procedure for Referenda and Rules of Practice for Modification or Exemption—Issued November 3, 1983, and published November 9, 1983.

This formal rulemaking action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291.

This action will not have a significant economic impact on a substantial number of small entities because it would not significantly affect costs for the regulated producers and importers. The maximum rate of assesment authorized under the order would be one and one-half percent of the value of flowers and plants sold. The order would also allow regulated producers and importers who choose to not support the program to obtain a refund upon written request. Refund procedures are designed to be as simple as is practicable. In adition, evidence introduced at public hearing sessions indicated that the information which would be required under the order by regulated producers and importers is currently maintained by most of them for normal business purposes. The order also provides that producers and importers whose annual sales of flowers and plants do not exceed $100,000 are exempt from the regulatory requirements authorized in the order. This exemption is intended to ease the paperwork burden on small businesses, hobbyists, and others not growing flowers and plants for profit.

On December 22, 1981, the Floral Research and Consumer Information Act (Title 17 of Pub. L. 97–98, 97th Congress, 7 U.S.C. 4301–4319) was approved. The Act authorizes the development of a nationally coordinated program of research, promotion, and consumer education for flowers and plants in accordance with the applicable rules of practice and procedure governing proceedings to formulate an order published October 8, 1982 (47 FR 44684).

The proposed order was formulated on the record of a public hearing with sessions as follows: Washington, D.C., October 27–28, 1982; Orlando, Florida, November 1–2, 1982; San Francisco, California, November 4–5, 1982; Fort Worth, Texas, November 9, 1982; and Washington, D.C., November 18–19, 1982.

Notice of the hearing and a supplemental notice were published in the October 12, and November 4, 1982, issues respectively of the **Federal Register**. The notice set forth a proposed order submitted by the Floraboard Development Committee, representing flower and plant producers and importers.

Based on the record of the hearing, on June 23, 1983, the Deputy Administrator filed a recommended decision on the proposed order with the Hearing Clerk. The recommended decision was published in the July 5, 1983, issue of the **Federal Register** (48 FR 30650) and allowed 45 days (or until August 19, 1983) for the filing of exceptions and comments to it. Twenty-eight parties filed exceptions or comments within this period.

Rulings on Exceptions

The California Farm Bureau Federation and other parties indicated that § 1290.176, Certification of organizations, of the proposed order should be amended to clarify the criteria used in certifying organizations for the purpose of nominating persons for membership on the Board. They were concerned that this section might be interpreted to mean that only organizations with both producer and importer members would be eligible for certification. The Act shows that the basic consideration in determining an organization's eligibility should be its membership composition. Record evidence indicates that organizations eligible to submit nominees for producer positions should be composed primarily of producers, while organizations eligible to nominate importers for Floraboard positions should be composed primarily of importers. To clarify these criteria, § 1290.176 should be revised as hereinafter set forth.

The Floraboard Development Committee (FDC) and other parties filed comments regarding the definition of importer. It was indicated that some individuals considered to be agents, brokers, or consignees may act only to clear flowers and plants through Customs in order to expedite delivery to a consignee at an interior port. Because the definition of importer in the recommended order does not differentiate among the various types of agents or consignees, or their particular actions and responsibilities in marketing imported commodities, the obligations of such persons under the terms of the order remain unclear. Therefore, the definition of importer has been revised to exclude all persons who may play a role in importing flowers and plants but are not involved in the selling of such commodities.

The FDC also stated that the findings and conclusions are unclear regarding the members necessary to constitute a quorum at meetings of the Board and Executive Committee. The findings should be understood to mean that a majority of the members from each commodity group and a majority of producer members must be present to constitute a quorum at meetings of the Floraboard. In addition, a majority of Executive Committee members and a majority of producer members of that committee must be present to constitute a quorum at meetings of the Executive Committee.

The FDC also stated that because of industry concern about sizable administrative expenses under the program, a limitation should be placed upon administrative expenses. Specifically the FDC recommended that the level of administrative costs should not exceed 10 percent of projected annual revenue each year after the first

full year of operation of the order. Testimony at the hearing supported this concept, and essentially the same suggestion was offered earlier in this proceeding and rejected on grounds that such a proviso might prove to be impractical or unnecessarily restrictive. However, the FDC has now recommended coupling a 10 percent administrative spending limit with authority for the Board to petition the Secretary to permit a higher level of this type of expenditure when warranted in a particular year because of unusual or emergency circumstances. Administrative costs of program similar to the proposed herein are a common concern, and a specified percentage limit on such costs might alleviate those concerns. However, it is difficult to anticipate all contingencies, and some flexibility is important in order to avoid a situation wherein program operations would be hampered. The FDC's proposal appears to be a reasonable compromise, and it should be adopted. Section 1290.161(a) is revised accordingly.

Exceptions were taken to recordkeeping requirements that would have required every producer, wholesaler, retailer, or importer of flowers and plants to maintain reports, books and records under this subpart. It was contended that this would impose an unnecessary burden on wholesalers and retailers, and be impracticable to enforce. The primary purpose of this requirement is to ensure that those persons who would be responsible for paying assessments, i.e. producers and importers, maintain adequate records so that proper payments to the Floraboard can be verified and refunds made to eligible producers and importers when requested. Normally, wholesalers or retailers would not need to maintain records specifially directed to this program, except when such persons also produce or import flowers and plants. Accordingly, to improve administration and clarify the intent of recordkeeping requirements, § 1290.171 is amended to specifiy that wholesalers and retailers who are not also producers or importers need not maintain additional records for the purposes of the order.

Mr. Leslie Freeman commented that the order's definition of "producer" expanded the scope of the Act by adding "propagational material" to the definition of "producer" although not included in the Act's definition. While the definition of producer in the order is different from that in the Act, that definition does not expand the scope of the Act. Section 1707 of the Act requires assessments on sales of flowers and plants. "Flowers and plants" is defined in section 1703(7) as including propagational material. Mr. Freeman's suggestion that we deduct propagational material from the value of flowers and plants sold is contrary to section 1707 of the Act which clearly states that the only deduction from the dollar value of flowers and plants assessed is for the "cost of plant material." The "cost of plant material" is defined in section 1703(17) as the actual price paid by a producer for any propagational material or any other flowers and plants used in the production of flowers and plants. The rationale behind this scheme is that the Act requires assessments only once on a flower or plant unless a producer has added value to it. Thus, under the Act a producer purchasing propagational material may deduct the price paid for propagational material because the person who sold it to the producer has already paid an assessment on it. By duducting the cost of propagational material the producer is assessed only on the value that the producer added to the flowers and plants.

Growers United to Oppose Floraboard (GUOF) objected to a number of findings in the Recommended Decision. GUOF argued that in concluding that there is a need for the proposed research and promotion order to effectuate the declared purposes of the Act, the Secretary relied upon evidence that was not introduced at the hearing. Specifically, sales figures discussed in the decision were adjusted by the Producer Price Index although official notice was not taken of the Producer Price Index at the hearing.

Without taking into account the commonly acknowledged inflation of the past decade the use of data in the record on the sales of flowers and plants could lead to inaccurate and misleading conclusions about the level of real growth in the industry. As the effect of inflation on sales figures could only be quantified objectively by relying upon extra-record evidence, sales figures and conclusions drawn from them should be eliminated from these findings to avoid misleading conclusions. Therefore, the initial five paragraphs in section (2) of the findings and conclusions in the recommended decision which use sales to support the need for the proposed order are excluded from consideration in determining whether such an order would effectuate the declared purposes of the Act. Also that portion of the discussion relating to the Florists Transworld Delivery Association advertising which also uses sales is disregarded. All other discussion on evidence relating to the need for the proposed order remains valid and is incorporated by reference herein. Specifically, the following conclusions reflected in that discussion are reaffirmed: (1) Regional shifts in domestic production of flowers and plants have been significant since 1970; (2) an increasing proportion of cut flowers has been imported into the United States during the last five years; (3) shifts in production have occurred because of relative changes in costs among production areas; (4) flower production costs are affected by seasonal variations in consumer demand; (5) advertising and promotion has been effective in the past; (6) funding for generic market promotions of flowers and plants has been inadequate; (7) additional promotion would benefit the flower and plant industry; and (8) research is needed by the floricultural industry. Therefore, the conclusion that a program as proposed would effectuate the declared purpose of the Act, which is to authorize a coordinated program of research, consumer and producer education, and promotion, is still supported by record evidence.

In addition, in its findings and declaration of policy pursuant to the Act, Congress observed that past efforts to develop and implement such programs have been inadequate. Although voluntary promotional efforts by various segments of the flower and plant industry have had some success, funding has been inadequate for promotion on a national scale. The evidence in this proceeding clearly supports that observation. Record evidence shows that a coordinated program of research, promotion, and consumer information could strengthen the position of the flower and plant industry in the market. Therefore, it is concluded that the program set forth hereinafter conforms with and will effectuate the Act.

GUOF also objected to the validity of some of the sales figures in the recommended decision and some of the conclusions drawn from the figures. However, since these figures have been eliminated from consideration GUOF's objection is a moot point. The GUOF and others also questioned the feasibility of administering the program, contending that certain definitions, particularly "producer," "importer," "total sales," and "flowers and plants," are too vague or unworkable for operations under the order. However, at this point only those definitions necessary to conduct a referendum are needed, and these have been covered in the Procedure for Referenda and Rules

of Practice for Modification or Exemption which were issued November 3, 1983. Other definitions to administer the order may be developed in more detail later, if needed.

GUOF also contended that there should have been a ruling on each of the proposed findings and conclusions submitted by interested parties. However, the recommended decision contains a detailed discussion relating to the matters raised in these submissions. Accordingly, each of the proposed findings was ruled upon either directly or by the context of the discussion in the recommended decision.

Mr. Jack Hughes, of the New York Farm Bureau, Inc., recommended that more specific requirements be cited as criteria for determining whether organizations would be eligible to participate in nominating members to the Floraboard under § 1290.176. Otherwise, he contended, certifications that the Secretary makes under § 1290.176 may be based upon subjective considerations. However, the language used in the Act and the order is purposely general in nature to provide flexibility in establishing specific criteria through rules to be developed by the Floraboard for approval by the Secretary. Accordingly this recommendation is not adopted. Several inconsistencies in the language in this section, that Mr. Hughes also noted, have been corrected.

The Washington Legal Foundation (WLF) objected to a number of proposed findings and conclusions in the recommended decision. One contention was that, for the purposes of § 1290.163, not all sales by related persons should be attributed to the sales of a producer or an importer. The WLF recommended that sales totals of individual producers and importers include the sales of the person's spouse, children, grandchildren and parents only if those persons are in the same business entity as the producer or importer. Such an interpretation of the sales attributable to an individual would not be in conformance with the Act. Therefore, although this recommendation is reasonable, the proposed change has not been adopted.

Other exceptions were filed which would not be in conformance with the Act, and accordingly have been denied. Among these, several parties suggested that a minimum level of voter participation should be established, below which referendum results would be held to be invalid. However, the necessary requirements for a valid referendum stated in the Act clearly do not include any particular level of participation. Other parties recommended that a producer or importer should be allowed to simply state his or her opposition to the order in writing and thereby become exempt from reporting and assessment requirements under the order. The Act, though, specifically requires all producers and importers whose annual assessable sales exceed $100,000 to file reports remit assessments to the Floraboard, and request refunds if they choose not to contribute to the program. Another party opposed the $100,000 exemption for smaller businesses and hobbyists. However, the Act specifically provides for such an exemption. One party recommended restricting the commodities covered in the program to "cut flowers" and excluding "potted flowering plants" and "foliage plants." Again, such a restriction would not be in conformance with the Act.

Several parties filed exceptions which recommended that the order provide for a mandatory review, in the form of a referendum to be held periodically to determine whether the industry favored the continuance of the program. However, record evidence does not indicate that such a review is necessary. Also the Act already provides that a referedum on continuance of the program shall be held whenever a referendum is requested by ten percent of the number voting in the initial referendum.

One party contended that since evidence supported the need for an initial rate of assessment of one half of one percent of the value of sales such a rate should be established in the order. However, the Floraboard should have the discretion to set a rate below that level if it determines it to be most appropriate. In addition, conditions when members of the Floraboard meet may be quite different than those foreseen at this time. For these reasons the order contains one-half of one percent as a maximum initial rate even though the decision language acknowledges the testimony that the maximum authorized rate of one-half of one percent may indeed be initially appropriate.

Another party suggested that nomination procedures should be developed for cases in which producers in an area are not members of any industry organization through which nominees can be selected. However, record evidence indicates that because of the large number of organization in the United States this problem is not likely to occur. Further, if such a problem develops the Secretary could address it then by developing such procedures.

In arriving at the findings and conclusions of this decision, each of the exceptions to the recommended decision were carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions are at variance with any of the exceptions, such exceptions are overruled.

Except for the aforementioned modifications, the material issues, findings and conclusions, and the general findings of the recommended decision are hereby approved and adopted by reference and made a part of this decision.

General findings

Annexed and made a part of this decision is the following proposed Floral Research and Consumer Information Order, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. However, this order shall not become effective unless approved in a referendum of affected producers and importers as provided in Section 1709 of the Act and in § 1200.16 of the Rules of Practice and Procedure Governing Proceedings to Formulate and Order (7 CFR Part 1200). If approved in such referendum, a new subpart, Floral Research and Consumer Information Order, would be added to Part 1290 of Title 7 of the Code of Federal Regulations.

Referendum order

It is hereby directed that a mail referendum be conducted among eligible producers and importers whose total sales of flowers and plants exceeded $100,000 during the representative period. The period January 1, 1982, through December 31, 1982, is hereby determined to be the representative period for the purpose of the referendum. The referendum is to determine whether eligible producers and importers favor the issuance of the annexed Floral Research and Consumer Information Order.

Kurt J. Kimmel and Anne M. Dec are hereby designated referendum agents of the Secretary of Agriculture to conduct the referendum. The agents may also appoint subagents to assist them.

The referendum procedure shall be in accordance with the procedure for the conduct of referenda as published in the November 9, 1983, issue of the **Federal Register.**

It is hereby ordered, That this decision, referendum order, and the annexed Floral Research and Consumer Information Order be published in the **Federal Register.**

Signed at Washington, D.C. on November 10, 1983.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

List of Subjects in 7 CFR Part 1290

Administrative practice and procedure, Advertising, Agricultural research, Floral products, Promotion.

It is proposed to amend 7 CFR Part 1290 by revising the part heading and by adding center headings and groups of sections to read as follows:

PART 1290—FLORAL RESEARCH AND CONSUMER INFORMATION ORDER

* * * * *

Definitions

Sec.

1290.101 Secretary.
1290.102 Act.
1290.103 Person.
1290.104 Cut flowers.
1290.105 Potted flowering plants.
1290.106 Foliage plants.
1290.107 Propagational material.
1290.108 Flowers and plants.
1290.109 United States.
1290.110 Promotion.
1290.111 Research.
1290.112 Consumer education.
1290.113 Marketing.
1290.114 Producer.
1290.115 Floraboard.
1290.116 Importer.
1290.117 Commodity group.
1290.118 Cost of plant material.
1290.119 Fiscal period.

Floraboard

1290.136 Establishment and membership.
1290.137 Term of office.
1290.138 Nominations.
1290.139 Appointments.
1290.140 Acceptance.
1290.141 Vacancies.
1290.142 Procedure.
1290.143 Compensation and reimbursement.
1290.144 Powers of the Board.
1290.145 Duties of the Board.

Research, Information, Education, and Promotion

1290.151 Research, Information, Education, and Promotion.

Expenses and Assessments

1290.161 Expenses.
1290.162 Assessments.
1290.163 Exemptions.
1290.164 Producer or importer refund.
1290.165 Influencing government action.

Reports, Books and Records

1290.171 Reports.
1290.172 Books and records.
1290.173 Confidential treatment.

Certification of Organizations

1290.176 Certification of organizations.

Miscellaneous

1290.180 Right of the Secretary.
1290.181 Suspension and termination.
1290.182 Proceedings after termination.
1290.183 Effect of termination or amendment.
1290.184 Amendments.
1290.185 Personal liability.
1290.186 Separability.

Authority: 7 U.S.C. 4301 et seq.

Definitions

§ 1290.01 Secretary.

"Secretary" means the Secretary of Agriculture of the United States Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1290.102 Act.

"Act" means the Floral Research and Consumer Information Act, Pub. L. 97–98 approved December 22, 1981, and any amendments thereto (7 U.S.C. 4301 et seq.).

§ 1290.103 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1290.104 Cut flowers.

"Cut flowers" means all flowers and decorative foliage used as fresh-cut flowers, fresh-cut decorative foliage, dried, preserved, and processed flowers, or dried and preserved decorative foliage, produced either under cover or in field operations.

§ 1290.105 Potted flowering plants.

"Potted flowering plants" means those plants that normally produce flowers, primarily produced in pots or similar containers, that are primarily used for interior decoration, whether grown under cover or in field operations.

§ 1290.106 Foliage plants.

"Foliage plants" means those plants, normally without flowers, primarily produced in pots or similar containers, that are primarily used for interior decorations, whether grown under cover or in field operations.

§ 1290.107 Propagational material.

"Propagational material" means any portions of plants used in the progagation of cut flowers, potted flowering plants, and foliage plants, including cuttings, bulbs and corms, seedlings, canes, liners, plants, cells or tissue cultures, air layers and bulblets, rhizomes, and root stocks. This term does not include seeds.

§ 1290.108 Flowers and plants.

"Flowers and plants" means cut flowers, potted flowering plants, foliage plants, and propagational material. This term means only flowers and plants for interior use and does not include bedding plants, exterior landscape plants, or any other exterior plant material.

§ 1290.109 United States.

"United States" means the fifty States of the United States of America, the territories and possessions of the United States of America, and the District of Columbia.

§ 1290.110 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of flowers and plants.

§ 1290.111 Research.

"Research" means any type of research to advance the image, desirability, or marketability of flowers and plants. This includes the gathering of statistics for marketing research.

§ 1290.112 Consumer education.

"Consumer education" means any action to provide information on the care and handling of flowers and plants.

§ 1290.113 Marketing.

"Marketing" means the sale or other disposition in commerce of flowers and plants.

§ 1290.114 Producer.

"Producer" means any person who produces domestically, for sale in commerce, cut flowers, potted flowering plants, foliage plants, or propagational material.

§ 1290.115 Floraboard.

"Floraboard," or the "Board" means the administrative board established pursuant to § 1290.136.

§ 1290.116 Importer.

"Importer" means any person who imports cut flowers, potted flowering plants, foliage plants, or propagational material from outside of the United States or any agent, broker, or consignee of a person or nation that produces any of these outside of the United States, who also makes the first sales transaction introducing the flowers and plants into commerce in the United States.

§ 1290.117 Commodity group.

"Commodity group" means that portion of the flower and plant industry devoted to the production and/or importation of any one of the following: (a) cut flowers; (b) potted flowering plants; or (c) foliage plants.

§ 1290.118 Cost of plant material.

"Cost of plant material" means the actual price paid by a producer for any propagational material or any other flowers and plants used in the production of flowers and plants. This term does not include the cost of seeds.

§ 1290.119 Fiscal period.

"Fiscal period" means the calendar year or such other period recommended by the Board and approved by the Secretary.

Floraboard

§ 1290.136 Establishment and membership.

There is hereby established a board, to be named "Floraboard," which shall initially consist of not more than 75 voting members. This Board shall be appointed by the Secretary from nominations submitted by eligible organizations certified pursuant to § 1290.176 or by producers and importers in a manner authorized by the Secretary pursuant to § 1290.138.

§ 1290.137 Term of office.

(a) The members of the Board shall serve for terms of three years, except for appointments to the initial Board, in which case one-third shall be for a term of one year, and one-third shall be for a term of two years.

(b) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(c) No member shall serve for more than two full successive terms.

§ 1290.138 Nominations.

All nominations to the Board authorized under § 1290.136 shall be made in the following manner:

(a) Within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, a nomination for each member to be selected for each geographic area and for each commodity group as specified in paragraphs (c) and (d) and (e) of this section, shall be submitted to the Secretary by eligible organizations certified pursuant to § 1290.176 except if there is no eligible organization certified for a geographic area, or if the Secretary determines that a substantial number of producers or importers are not members of, or their interests are not represented by, any such eligible organization, then nominations shall be submitted in a manner authorized by the Secretary. Adequate notice of all nomination meetings, whether initial or subsequent ones, shall be given flower and plant producers, importers and the Secretary.

(b) Where there is more than one eligible organization within a geographic area, the organizations shall caucus for the purpose of jointly nominating a qualified individual for each member position. When organizations cannot decide in caucus, the Floraboard, with the approval of the Secretary, would establish procedures to enable eligible organizations in such caucus to decide on an individual.

(c) For purposes of nominating producers to the initial Board, the United States shall be divided into nine geographic areas as follows:

(1) Area 1 shall consist of Alaska, Hawaii, Oregon, Washington, American Samoa, Guam, North Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Area 2 shall consist of California.

(3) Area 3 shall consist of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

(4) Area 4 shall consist of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

(5) Area 5 shall consist of Arkansas, Louisiana, Oklahoma, Missouri, and Texas.

(6) Area 6 shall consist of Indiana, Kentucky, Michigan, and Ohio.

(7) Area 7 shall consist of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

(8) Area 8 shall consist of Alabama, Delaware, the District of Columbia, Georgia, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

(9) Area 9 shall consist of Florida, Puerto Rico, and the Virgin Islands.

(d) For purposes of nominating importers to the initial Board there shall be Area 10 consisting of the United States.

(e) For Board nomination purposes, producers and importers shall be divided into three commodity groups: cut flowers, potted flowering plants, and foliage plants. When the Board is initially established, it shall be composed of one-third producers and importers of cut flowers, one-third producers and importers of potted flowering plants, and one-third producers and importers of foliage plants. Representation in each area is based on the proportion of the total value of sales for each commodity group that each area accounts for and shall be as follows:

Area No.	Number of board members			
	Cut flowers	Flowering plants	Foliage plants	Total
1	1	2	1	4
2	7	3	6	16
3	2	1	1	4
4	1	3	1	5
5	0	2	2	4
6	2	3	1	6
7	2	5	2	9
8	1	3	1	5
9	2	2	8	12
10	7	1	2	10
	25	25	25	75

(f) After the establishment of the Board, the nominations for subsequent Board members shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms for positions to be filled.

(g) Two years after assessment collections commence pursuant to this order, and periodically thereafter, the Floraboard, with the approval of the Secretary, shall adjust the commodity group representation of each commodity group on the basis of the amount of assessments, less refunds, collected from each commodity group during the preceding fiscal period. In addition, this periodic adjustment of the membership of the Floraboard shall reflect, to the maximum extent practicable, the proportionate share of assessments, less refunds, collected from producers in each of the several geographic areas of the United States defined by the Secretary under paragraphs (c) and (d) of this section and the proportionate share of assessments, less refunds, collected from importers of flowers and plants imported into the United States from each country, provided that there shall be at all times more producers than importers representing a particular commodity group on the Board.

(h) For purposes of reapportionment, after the establishment of the initial Board, the area grouping of the United States provided for in paragraphs (c) and (d) of this section, and the area distribution of the members of the Board in paragraph (e), shall be reviewed at least every five years, but not more than every three years, by the Board, or by a person or agency designated by the Board to perform such review, and shall take into consideration the amount of assessments, less refunds, collected in each geographic area respectively, during the period immediately preceding such review. The results of such review shall be reported to the Secretary along with any recommendations by the Board including whether the delineation of areas or distribution of Board members by area should continue without any change, or whether changes should be

made in either the areas of the number of Board members to be appointed from each area. The Secretary may adopt any such recommendation and make changes in the area distribution of the Board to implement such recommendations.

§ 1290.139 Appointments.

From the nominations made pursuant to § 1290.136 and § 1290.138 of this subpart, the Secretary shall appoint the members of the Board on the basis of the representation provided for in § 1290.138.

§ 1290.140 Acceptance.

Any nominee selected to be a member of the Floraboard shall notify the Secretary of his acceptance in writing within 30 days.

§ 1290.141 Vacancies.

To fill any vacancies occasioned by the death, removal, resignation or disqualification of any member of the Board, a successor for the unexpired term of such member shall be nominated and appointed in a manner specified in §§ 1290.136–1290.139, except that the replacement of a Board member with an unexpired term of less than six months is not necessary.

§ 1290.142 Procedure.

(a) A majority of the members representing each commodity group, and a majority of members representing producers shall constitute a quorum of the Board. A majority of the Executive Committee and a majority of committee members representing producers shall constitute a quorum of the Executive Committee. Any action of the Board or Executive Committee shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) For matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also act upon the concurring votes of a majority of its members cast by mail, telegraph, or telephone, but any such telephone vote shall be confirmed promptly in writing.

§ 1290.143 Compensation and reimbursement.

The members of the Board, and the members of any special panels convened, shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties under this subpart.

§ 1290.144 Powers of the Board.

The Board shall have the following powers:

(a) to supervise the administration of this subpart in accordance with its terms and conditions;

(b) to recommend rules and regulations to effectuate the terms and provisions of this subpart;

(c) to require its employees to receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) to recommend to the Secretary amendments to this subpart.

§ 1290.145 Duties of the Board.

The Board shall, among other things, have the following duties:

(a) To meet and organize and to select from among its members a chairman, and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules and by-laws for the conduct of business as it may deem advisable;

(b) To develop and submit to the Secretary plans or projects, together with the Board's recommendations with respect to approval thereof by the Secretary;

(c) To prepare, and submit to the Secretary for his approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of each research, information, advertising, promotion, and developmental plan or project;

(d) To appoint from its members an Executive Committee, consisting of not more than 15 members, which shall, to the maximum extent practicable, reflect the membership composition of the Board, and whose commodity group representation shall be proportional to that of the Board. It shall be a duty of the Executive Committee to employ a staff for the Board and administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(e) To accumulate a reasonable reserve not to exceed approximately two fiscal periods' expenses to maintain continuity of programs and fulfill other obligations and expenses;

(f) To enter into contracts or agreements, with the approval of the Secretary, with appropriate contracting parties, including industry groups, profit or nonprofit companies, private or State colleges and universities, and governmental groups, for the development and carrying out of the projects and programs of the Board, and for the payment of the costs thereof with funds accruing pursuant to the administration of this subpart except nothing in this subpart shall preclude the Board from directly, without the use of contractors, conducting projects or activities to effectuate the intent and purposes of the Act. Any such contract or agreement shall provide (1) that such contracting parties shall develop and submit to the Board a plan or project, together with a budget or budgets, which shall show the estimated cost to be incurred for such plan or project, and (2) that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement, to make periodic reports to the Board and not to use these funds to finance unrelated activities of the contracting party or its affiliated organizations, to account for funds received and expended, and to report to the Secretary or Board as required;

(g) To maintain books and records and prepare and submit reports from time to time to the Secretary as he may prescribe and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(h) To periodically prepare and make public and to make available to producers and importers, reports of activities carried out and at least once each fiscal period to make public an accounting for funds received and expended;

(i) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request and to submit a copy of each such audit to the Secretary;

(j) To give the Secretary the same notice of meetings of the Board, the Executive Committee, and subcommittees as is given to its members in order that representatives of the Secretary may attend such meetings;

(k) To submit to the Secretary such information pertaining to this subpart as may be requested;

(l) To appoint and convene, from time to time, special panels drawn from the production, importation, wholesale and retail segments of the flower and plant industry to assist in the development of marketing and research programs; and

(m) To develop and recommend such rules and regulations to the Secretary for approval thereof as may be necessary to administer this order, or any provisions thereof, including those necessary for the development and

carrying out of projects or activities to effectuate the intent and purposes of the Act.

Research, Information, Education, and Promotion

§ 1290.151 Research, information, education, and promotion.

(a) The Board shall in the manner prescribed in § 1290.145 provide for:

(1) The establishment, issuance, effectuation, and administration of plans or projects for advertising, sales promotion, consumer education, producer information, or interior urban beautification, and for the disbursement of necessary funds for such purposes; and

(2) The establishment and carrying on of research, market development projects, and studies with respect to the sale, distribution, marketing, or utilization of flowers and plants in accordance with Section 1708 of the Act (7 U.S.C. 4307), to the end that the marketing and utilization of flowers and plants may be encouraged, expanded, improved, or made more efficient and/or acceptable, and the data collected by such activities may be disseminated, and for the disbursement of necessary funds for such purposes.

(b) Each program or project authorized under paragraph (a) of this section shall be periodically evaluated by the Board to insure that each plan or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board shall terminate such program or project.

(c) No reference to a private brand or trade name shall be made. No advertising, consumer education, or sales promotion programs shall make use of false or misleading claims on behalf of flowers and plants, or false or misleading statements with respect to quality, value,or use of any competing product.

Expenses and Assessments

§ 1290.161 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from assessments received pursuant to § 1290.162 and other funds available to the Board, including donations. After the first full year of operation of the order, normal administrative expenses shall not exceed 10 percent of the projected revenue of that fiscal year, unless the Board has petitioned for and the Secretary has approved a higher level of expenditure because of unusual or emergency conditions.

(b) The Board shall reimburse the Secretary from assessments for all the expenses and expenditures, excluding salaries, which were incurred by the Government in connection with the conduct of the referendum when an order is issued or when an amendment is voted upon.

(c) The Board shall reimburse the Secretary from assessments for administrative costs, including salaries, which are incurred by the Government with respect to this subpart.

§ 1290.162 Assessments.

(a) Each producer, upon his or her selling or transferring ownership of flowers and plants within the United States, shall pay an assessment to the Board based on the dollar value of such sale transaction minus the cost of plant material. If the producer is a retailer, the assessment will be based on the then current wholesale value of the flowers and plants, less the cost of plant material. In the case of consignment sales, the producer shall pay the assessment on the basis of the dollar value of the sale of flowers and plants, less the sales commission, freight cost, and cost of plant material.

(b) Each importer, upon the sale of imported flowers and plants within the United States, shall pay an assessment to the Floraboard based on the dollar value of such sales transactions, without deducting the cost of plant material. If the importer is a retailer, the assessment will be based on the purchase price paid by the importer. In the case of consignment sales, the assessment shall be paid by the importer and shall be based on the dollar value of the sale of flowers and plants, less the sales commission and cost of transportation within the United States.

(c) For the first two years after this order is approved in referendum, the rate of assessment shall not exceed one-half of one per centum of the value of the flowers and plants sold as determined under paragraphs (a) and (b) of this section.

(d) For the years subsequent to the first two years after this order is approved in referendum, the Board may increase or decrease the rate of assessment prescribed by the order by no more than one-quarter of one per centum of the value of flowers and plants sold per year. The rate of assessment may in no event exceed one and one-half per centum of the value of flowers and plants sold.

(e) Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder.

§ 1290.163 Exemptions.

Any producer or importer, and any person who is both a producer and importer, whose total sales of flowers and plants do not exceed $100,000 during a twelve consecutive month period prior to the date an assessment is due and payable shall be exempt from assessments under this part. The Board shall have the discretion to make annual adjustments in the level of exemption to account for inflation. For the purpose of determining a producer's or importer's total sales, rules and regulations shall be issued hereunder.

§ 1290.164 Producer or importer refund.

Any producer or importer who pays an assessment under the authority of the order shall have the right to demand and receive from the Board a refund of such an assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with regulations and on such forms as are prescribed by the Board and approved by the Secretary. The Board may prescribe that the importers requesting refunds must provide the name and address of the foreign producer who produced the flowers and plants for which the refund is requested. Such demands shall be made within sixty days from the date the assessment becomes payable pursuant to § 1290.162(e). Refunds shall be made within 30 days of demand if administratively possible, but in no event more than sixty days after the submission of proof satisfactory to the staff of the Board that the producer or importer paid the assessment for which refund is sought.

§ 1290.165 Influencing government action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 1290.171 Reports.

Each producer, wholesaler, retailer or importer of flowers and plants who may be subject to this subpart shall be required to report to the employees of the Board at such times and in such

manner as it may prescribe such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to, the following:

(a) Volume and value of domestically produced flowers and plants sold and the cost of plant material; and

(b) Volume and value of imported flowers and plants sold.

(c) For the purposes of this section and § 1290.172, wholesalers and retailers that are not also producers or importers shall only be required to keep normal business records, and shall not be required to keep additional records.

§ 1290.172 Books and records.

Each producer, wholesaler, retailer or importer of flowers and plants shall maintain and during normal business hours make available for inspection by the employees of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1290.173 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1290.171 and 1290.172 and all information obtained by the Board pertaining to producer or importer refunds made pursuant to § 1290.164 shall be kept confidential by all persons including employees of the Secretary, and all officers and employees of contracting parties, and shall not be available to Board members or any other producers, wholesalers, retailers or importers. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of a number of persons subject to this subpart or statistical data collected from such persons, which do not identify the information furnished by any one person, (b) the publication of general statements relating to refunds made by the Board during any specific period, including regional information on refunds, (c) the publication by the Board of inforamtion on the amount of assessments collected from each commodity group and the rate of refund in each commodity group or, (d) the publication by direction of the Secretary of the name of any person convicted of violating this subpart, together with a statement of the particular provisions violated by such person.

Certification of Organizations

§ 1290.176 Certification of organizations.

(a) Any organization within a georgaphic area designated pursuant to § 1290.138 may request the Secretary to certify its eligibility to participate in nominating producer members to represent such geographic area on the Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) Geographic area covered by the organization's active membership;

(2) Nature and size of the organization's active membership, including proportion of total of such active membership accounted for by producers, and information as to the volume of production by State accounted for by the organization's membership;

(3) The extent to which the producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) Whether the majority of the governing board of the organization is composed of producers; and

(8) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary consideration in determining the eligibility of an organization shall be whether its membership consists primarily of producers or importers of flowers and plants.

(c) Any importer organization within the United States may request the Secretary to certify its eligibility to represent importers of flowers and plants, to participate in nominating members on the Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall be based on similar criteria as that outlined in paragraphs (a)(1) through (a)(8), except as these relate to importers.

(d) The Secretary shall certify any organization which he finds to be eligible under this section and his determination shall be final. After the original certification of an organization, the Secretary may require recertification of organizations periodically.

Miscellaneous

§ 1290.180 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Floraboard shall be submitted to the Secretary for his approval.

§ 1290.181 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of producers and importers voting in the referendum approving this subpart, to determine whether such producers and importers favor the termination or suspension of this subpart, and the Secretary shall suspended or terminate such subpart six months after he determines that its suspension or termination is approved or favored by a majority of the producers and importers voting is such referendum who, during a representative period determined by the Department, have been engaged in the production or importing of flowers and plants.

§ 1290.182 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board upon designation by the Secretary. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1290.145(f); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the

Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the trustees.

(d) Any residual funds or property not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the flower and plant research or information programs hitherto authorized.

§ 1290.183 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any right or remedies of the United States, or of any person, with respect to any such violation.

§ 1290.184 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by an organization certified pursuant to § 1290.176 or by any individual affected by the provisions of the order, including the Secretary.

§ 1290.185 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, or such member or employee, except for acts of dishonesty or willful misconduct.

§ 1290.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

[FR Doc. 83-30870 Filed 11-15-83; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052T]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antitussive Drug Products

Correction

In FR Doc. 83-28333, beginning on page 48576, in the issue of Wednesday, October 19, 1983, make the following corrections:

1. On page 48578, in the third column, in the last line, "14 hours" should read "24 hours".

2. On page 48579, in the third column, in the third line from the bottom, "W.W." should read "W.E.".

3. On page 48583, in the first column, in the sixth line from the bottom, "(CFD 76-49R" should read "(CRD 76-49R".

4. On page 48585, in the second column, under "References", in the sixth entry, in the second line, "CFD" should read "CRD".

5. Also on page 48585, in the second column, under "References" in the sixteenth entry, in the third line "NAS" should read "ANS".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-16-80]

Property Transferred in Connection With the Performance of Services

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the existing regulations under section 83 of the Internal Revenue Code of 1954, relating to property transferred in connection with the performance services. The proposed regulations reflect the changes made to the applicable law by the Economic Recovery Tax Act of 1981, and clarify certain provisions of the existing regulations. The regulation would provide the public with the guidance needed to comply with section 83 and would affect certain taxpayers who participate in the transfer of property in connection with the performance of services.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 16 1984. The amendments to §§ 1.83-3 (e) and -6(a)(2) are proposed to be effective for property transferred after June 30, 1969. The additions of paragraphs (j) and (k) to § 1.83-3 are proposed to be effective for property transferred after December 31, 1981.

ADDRESS: Send comments and a request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-16-80], 1111 Constitution Avenue, NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Bruce Jurist, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3238, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 83 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 252 of the Economic Recovery Tax Act of 1981 (95 Stat. 260, 26 U.S.C. 83(c)) and to make certain corrective and clarifying changes to the existing regulations under section 83. They are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Explanation of Provisions

Section 83 deals with transactions in which property is transferred in connection with the performance of services. Section 1.83-3(e) defines "property" for purposes of section 83 and excludes from that term an "unfunded and unsecured promise to pay money in the future." These proposed regulations expand this exclusion so as to exclude from the definition of "property" an unfunded and unsecured promise to pay property other than money in the future.

Section 83(c)(3), as added by section 252(a) of the Economic Recovery Act of 1981, provides that so long as the sale of property at a profit could subject a

person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in that property will be considered to be subject to a substantial risk of forfeiture and not transferable. The proposed addition of § 1.83–3(j) to the regulations provides that for purposes of section 83 and the regulations thereunder, the section 16(b) restriction will be considered to have lapsed after its initial six-month period, notwithstanding any extension of such restriction under the rules of section 16(b) of the Securities Exchange Act of 1934.

Section 252(b) of the Economic Recovery Tax Act of 1981 provides that property is subject to a substantial risk of forfeiture and is not transferable so long as such property is subject to a restriction on transfer to comply with the "Pooling-of-interests Accounting" rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135). The proposed addition of § 1.83–3(k) to the regulations reflects the above-cited statute.

Section 1.83–6(a)(2) contains a special rule relating to the allowance of a deduction by an employer for property transferred to an employee in connection with the employee's performance of services. The regulation provides that the employer is entitled to a deduction for taxable year in which the amount is includible in the employee's income, but only if the employer deducts and withholds upon such amount in accordance with section 3402 of the Code. The proposed amendment provides exceptions to the deduct and withhold requirement in cases where the employer either has no obligation to withhold under that section, or the employer is unable to withhold but includes the compensation on a Form W–2 or on an information return filed with the Service.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 533 do not apply because the rules proposed are interpretative. Accordingly, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these proposed regulations is Philip R. Bosco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel in the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.61–1—1.28–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

PART 1—[AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.83–3 is amended by revising paragraph (e) and adding new paragraphs (j) and (k). The amended section reads as follows:

§ 1.83–3 Meaning and use of certain terms.

* * * * *

(e) *Property.* For purposes of section 83 and the regulations thereunder, the term "property" includes real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future. The term also includes a beneficial interest in assets (including money) which are transferred or set aside from the claims of creditors of the transferor, for example, in a trust or escrow account. See, however, § 1.83–8(a) with respect to employee trusts and annuity plans subject to section 402(b) and section 403(c). In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered to be property. Where rights in a contract providing life insurance protection are substantially nonvested, see § 1.83–1(a)(2) for rules relating to taxation of the cost of life insurance protection.

* * * * *

(j) *Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934*—(1) *In general.* For purposes of section 83 and the regulations thereunder, if the sale of property at a profit within six months after the purchase of the property could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in such property are treated as subject to a substantial risk of forfeiture and as not transferable until the expiration of such period.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1983, X corporation sells to P, a principal officer of X, in connection with P's performance of services, 100 shares of X corporation stock at $10 per share. At the time of such sale the fair market value of the X corporation stock is $100 per share. P, as a principal officer of X, is liable to suit under section 16(b) of the Securities Exchange Act of 1934 for recovery of any profit from any sale and purchase or purchase and sale of X corporation stock within a six-month period. Because the section 16(b) restriction is applicable to P, P's rights in the 100 shares of stock purchased on January 1, 1983, are treated as subject to a substantial risk of forfeiture and as not transferable through June 29, 1983. P does not include any amount with respect to the stock purchase in gross income as compensation on the date of purchase. On June 30, 1983, the fair market value of X corporation stock is $250 per share. P must include $24,000 (100 shares of X corporation stock × $240 ($250 fair market value per share less $10 price paid by P for each share)) in gross income as compensation on that date.

Example (2). Assume the same facts as in example (1) except that on June 1, 1983, X corporation sells to P an additional 100 shares of X corporation stock at $20 per share. At the time of such sale the fair market value of the X corporation stock is $150 per share. On June 30, 1983, P must include $24,000 in gross income as compensation with respect to the January 1, 1983 purchase. On November 30, 1983, the fair market value of X corporation stock is $200 per share. Accordingly, on that date P must include $18,000 (100 shares of X corporation stock × $180 ($200 fair market value per share less $20 price paid by P for each share)) in gross income as compensation with respect to the June 1, 1983 purchase.

(3) *Effective date.* Paragraph (j) of this section shall apply to property transferred after December 31, 1981.

(k) *Special rule for certain accounting rules.* (1) For purposes of section 83 and the regulations thereunder, property is subject to substantial risk of forfeiture

and is not transferable so long as such property is subject to a restriction on transfer to comply with the "Pooling-of-Interests Accounting" rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135).

(2) *Effective date.* Paragraph (k) of this section shall apply to property transferred after December 31, 1981.

Par. 2. Section 1.83–6 is amended by revising paragraph (a). The amended section reads as follows:

§ 1.83–6 Deduction by employer.

(a) *Allowance of deduction*— * * *

(2) *Special rule.* If the service provider is an employee of the person for whom services were performed, such deduction is allowed for the taxable year of the employer in which or with which ends the taxable year of the employee in which such amount is includible as compensation, but only if the employer deducts and withholds upon such amount in accordance with section 3402. A deduction will not be disallowed under the preceding sentence if the employer does not deduct and withhold because—

(i) A person other than the employer is required to deduct and withhold upon such compensation and such other person deducts and withholds on such amount but does not claim the deduction;

(ii) The employee's wages do not exceed the amount exempt from withholding;

(iii) The amount is excluded from the employee's gross income under a provision such as section 79, section 101(b) or subchapter N; or

(iv) The employer is unable to deduct and withhold and the employer includes the amount of such compensation on a Form W–2 or on an information return filed with the Internal Revenue Service in the case where the compensation is not "wages" as defined in section 3401(a).

The employer or other person will be considered to deduct and withhold if such person deducts and withholds by the day on which the last withholding payment for such person's taxable year is due. For taxable years of employees ending before July 21, 1978, such deduction is allowed for the taxable year of the employee in which such amount is includible as compensation, if either the employer deducts and withholds upon such amount in accordance with section 3402 or the employee includes such amount in gross income as compensation for such taxable year of the employee.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 83–30889 Filed 11–15–83; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Parts 1, 11, and 13

[LR–35–82]

80% Control Test for Brother-Sister Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking to amend the income tax regulations relating to the definition of a brother-sister controlled group of corporations or businesses. These amendments are necessary to conform the present regulations to the recent Supreme Court decision in *United States* v. *Vogel Fertilizer Co.*, which held that a person's stock ownership is not taken into account for purposes of the 80% ownership test unless that person owns stock in each brother-sister corporation. These regulations will provide the public with the guidance needed to comply with the law.

DATE: Written comments and requests for a public hearing must be delivered or mailed by January 16, 1984. In general, the proposed amendments to the regulations under section 1563 of the Code (which defines a controlled group of corporations) are proposed to be effective for taxable years ending after December 31, 1970. The proposed amendments to the regulations under section 414(c) of the Code (relating to employees of trades or businesses under common control) generally are to apply for plan years beginning after September 2, 1974 (subject to special rules for plans in existence on January 1, 1974). The proposed amendments to the regulations under section 52 of the Code (relating to tax credits for employees) generally are to apply to taxable years beginning after December 31, 1976. Certain of the proposed amendments will not apply retroactively if the result would be adverse to certain taxpayers.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–35–82), Washington, D.C. 20224.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Parts 1, 11, and 13) under section 52, 414(c), and 1563 of the Internal Revenue Code of 1954. The amendments are proposed to conform the regulations to a decision of the Supreme Court. The proposed regulations are to be issued under the authority contained in Code sections 52(b) (92 Stat. 2835; 26 U.S.C. 52(b)), 414(c) (88 Stat. 925; 26 U.S.C. 414(c)) and 7805 (68A Stat. 917; 26 U.S.C. 7805).

Explanation of Provisions

Section 1563(a)(2) of the Internal Revenue Code provides a two-part stock ownership test for determining whether two or more corporations comprise a brother-sister controlled group. The Supreme Court, in *United States* v. *Vogel Fertilizer Co.*, 455 U.S. 16 (1982), held invalid the Service's interpretation of the 80-percent ownership test in § 1.1563–1(a)(3) of the regulations.

The issue before the Supreme Court was whether Vogel Fertilizer and Vogel Popcorn Company comprised a brother-sister controlled group of corporations under section 1563(a)(2) so that section 1561(a)(1) limited them to a single surtax exemption for the years in issue.

Section 1563(a)(2) provides that a "controlled group of corporations" includes a "brother-sister controlled group". A brother-sister controlled group is defined, in part, as two or more corporations if five or fewer persons own stock possessing (A) at least 80 percent of the total combined voting power or at least 80 percent of the total value of the stock of each corporation, and (B) more than 50 percent of the total combined voting power or more than 50

percent of the total value of the stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation. The interpretation of the statutory provision by § 1.1563–1(a)(3) of the regulations is that the term "brother-sister controlled group" means two or more corporations if the same five or fewer persons own "singly or in combination" the two prescribed percentages of voting power or total value. Thus, under the regulations, a person's stock ownership in one corporation could be taken into account for purposes of the 80 percent requirement even though that person owned no shares in the other corporations in the purported controlled group.

The Supreme Court held this regulation invalid because the statute was intended to apply only where each person whose stock is taken into account for purposes of the 80 percent requirement owns stock in each corporation of the group. To reflect the decision in *Vogel Fertilizer* the regulations under section 1563 relating to brother-sister controlled groups of corporations are proposed to be amended to provide that each person whose stock ownership is taken into account for purposes of the 80 percent requirement must be a person whose stock ownership is counted toward the 50 percent requirement.

The exact context in which this case arose has been eliminated, since Congress replaced the surtax exemption with a graduated rate schedule for taxable years beginning after December 31, 1978. However, members of a controlled group must now share a single rate schedule. Also, the application of the 80 percent test under section 1563(a)(2)(A) has considerable importance in other Code areas.

For example, the definition of "controlled group of corporations" under section 1563(a)(2) affects the computation of the accumulated earnings credit under section 535(c) for purposes of the accumulated earnings tax (See Code section 1561(a)(2) and Treas. Reg. §§ 1.535–3 (b)(2) and (c)); the limitation on the small business deduction of life insurance companies under sections 804(a)(3), 809(d)(10), and 809(f) (see Code section 1561(a)(3) and Treas. Reg. § 1.804–2(d)(1)(iv)); the computation of the tax liability limitation on an investment credit under section 38 (see section 46(a)(6)); the apportionment of the exemption from the minimum tax on preference items under section 56(a) (see section 58(b)); and the apportionment of the section 179(b) limitation on the additional first-year depreciation deduction permitted small businesses under section 179.

Trades or Businesses Under Common Control

Section 414(b) provides in part that for purposes of applying the provisions of sections 401 (qualified plans), 408(k) (relating to simplified employee pensions), 410 (minimum participation standards), 411 (minimum vesting standards), and 415 (limitations on benefits and contributions), all employees of a "controlled group of corporations" shall be treated as employed by a single employer. Section 414(c) provides that for purposes of those sections, all employees of trades or businesses (whether or not incorporated) which are under common control shall be aggregated and treated as employed by a single employer.

Section 414(c) delegates authority to the Secretary to prescribe regulations for the determination of common control. The last sentence of section 414(c) limits that authority to prescribing rules based upon principles similar to those which apply in the case of section 414(b). Control in section 414(b) is defined by reference to section 1563(a), determined without regard to subsection (a)(4) (relating to certain insurance companies) and without regard to subsection (e)(3)(C) (relating to attribution from an employee's trust described in section 401(a)). The temporary regulations under section 414(c) (§ 11.414(c)–2(c)) that define a brother-sister group of trades or businesses under common control parallel the rules under section 1563(a) and the regulations thereunder as modified by section 414(b). These temporary regulations also apply for purposes of section 210(d) of the Employee Retirement Income Security Act of 1974 (88 Stat. 867).

Accordingly, the temporary regulations under section 414(c) (which were promulgated in T.D. 7388, approved October 29, 1975 (40 FR 51435)) are proposed to be amended to reflect the decision in *Vogel Fertilizer*.

Section 52 provides in part that for purposes of certain jobs credits, all employees of members of the same group of controlled corporations or of trades or businesses (whether or not incorporated) which are under common control are treated as if they were employed by a single employer. The term "controlled group of corporations" is defined with reference to section 1563(a). For trades or businesses which are under common control, the Secretary is to prescribe regulations based on principles similar to the rules under section 1563. Accordingly, the regulations under section 52 which define trades or businesses under common control are proposed to be amended to reflect the decision in *Vogel Fertilizer*.

Transitional rules

In general, the proposed amendments are retroactive. (See, however, the limitations on filing claims for credit or refund in section 6511 of the Code.) Because taxpayers may have relied on the Service's position in the regulations, two transitional rules are provided.

First, the proposed regulations provide that, under the authority of section 7805 (b), the amended definition of a brother-sister controlled group in §§ 1.1563–1(a)(3) and 11.414(c)–2(c) will not have adverse retroactive effect for taxable years or plan years beginning before [date of publication of the Treasury decision adopting these proposed regulations] in applying certain provisions of the Code relating to pension, annuity, profit sharing, and stock bonus plans, and certain provisions of the Employment Retirement Income Security Act of 1974. Nonretroactivity will not be imposed on any taxpayer to the extent that doing so would have an adverse effect on that taxpayer. However, relief will not be available to taxpayers who take or have taken certain actions relating to employee benefit plans that are inconsistent with being treated as a member of the old group.

Under the second rule, taxpayers may, subject to certain conditions, use, for all purposes of the Code, the definition of brother-sister controlled group under §§ 1.1563–1(a)(3), 1.52–1(d), and 11.414(c)–2(c) (as in effect before the amendments proposed by this notice of proposed rulemaking) for taxable periods before [date of publication of the Treasury decision adopting these proposed regulations]. These conditions generally would require that each member of the old group file a consent within six months after these proposed regulations become final and that no member apply the amended regulations in determining its tax liability.

The proposed rules also would allow certain elections for prior taxable years that are affected by the proposed amendments to be amended within six months after the proposed amendments are published as a Treasury decision.

In addition, if a group applies the amended regulations retroactively, any plan amendments must be drafted so as to avoid any decrease in accrued benefits or decrease in vesting

percentages. See section 411(d)(6) and § 1.411(d)–3(b), relating to prohibition against accrued benefit decreases, as well as section 411(a)(10) and § 1.411(a)–8, relating to changes in vesting schedules.

Deletion of Temporary Regulations

This document deletes temporary regulations (§ 13.16) relating to the definition of a controlled group of corporations. These temporary regulations were superseded by final regulations published on April 25, 1972 (37 FR 8068).

Amendments to Proposed Regulations

A notice of proposed rulemaking was published that sets forth rules for brother-sister groups under common control. This notice of proposed rulemaking amends proposed §§ 1.414(c)–2 and 1.414(c)–5 (published on November 5, 1975, 40 FR 51467), to conform that notice of proposed rulemaking to the decision in *Vogel Fertilizer.*

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal authors of these proposed regulations are Mary Frances Pearson and Michel A. Dazé of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.0–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR 1.1501–1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

26 CFR Part 11

Income taxes, Pensions, Employee Retirement Income Security Act of 1974.

26 CFR Part 13

Income taxes, Tax Reform Act of 1969.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Parts 1, 11, and 13 are as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. Section 1.52–1 is amended by striking ", singly or in combination," from pragraph (d)(1)(i), by adding a new flush paragraph at the end of paragraph (d)(1)(ii), and by adding a new paragraph (h) at the end thereof to read as set forth below.

§ 1.52–1 Trades or businesses that are under common control.

* * * * *

(d) *Brother-sister group of trade or businesses under common control*—(1) *In general.* * * *

The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons whose ownership is considered for purposes of the effective control requirement.

* * * * *

(h) *Transitional rule*—(1) *In general.* Paragraph (d) of this section, as amended by T.D. [insert T.D. number of this notice when adopted], applies to all taxable years to which section 52(b) applies.

(2) *Election.* In the case of taxable years ending before [insert date this notice is published as a T.D.]—

(i) If, pursuant to paragraph (b) of this section, an organization indicated in a timely filed return that it chose to be a member of a brother-sister group under common control, and it is not a member of such group because of the amendments to paragraph (d) of this section made by T.D. [insert T.D. number of this notice when adopted], such organization may make the choice described in paragraph (b) of this section by filing an amended return on or before [insert date that is 6 months after the date this notice is adopted as a T.D.] if such organization would otherwise still be a member of more than one group of trades or businesses under common control, and

(ii) If an organization

(A) Is a member of a brother-sister group of trades or businesses under common control under § 1.52–1(d)(1), as in effect before amendment by T.D. [insert T.D. number of this notice when adopted] ("old group"), for such taxable year and

(B) Is not such a member for such taxable year because of the amendments made by such Treasury decision,

such organization (whether or not a corporation) nevertheless will be treated as a member of such old group if all the organizations (whether or not corporations) that are members of the old group meet all the requirements of § 1.1563–1(d)(3) with respect to such taxable year.

Par. 2. Section 1.1563–1 is amended as follows:

1. Paragraph (a)(3)(i) is amended by deleting ", singly or in combination," and by adding a new flush paragraph at the end of (a)(3)(i)(*b*) thereof as set forth below.

2. Paragraph (a)(3) is amended by revising Examples (1) and (2) and by adding new Examples (3) and (4) in paragraph (ii) and adding a new paragraph (iii) as set forth below.

3. Paragraph (c)(2)(iv) is amended by revising the charts in Examples (1) and (2) as set forth below.

4. Paragraph (d) is added to read as set forth below.

§ 1.1563–1 Definition of controlled group of corporations and component members.

(a) *Controlled group of corporations.*

* * *

(3) *Brother-sister controlled group.* (i)

* * *

The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the

same persons whose stock ownership is considered for purposes of the more-than-50 percent requirement.

(ii) * * *

Example (1). The outstanding stock of corporations P, Q, R, S, and T, which have only one class of stock outstanding, is owned by the following unrelated individuals:

CORPORATIONS

Individuals	P (percent)	Q (percent)	R (percent)	S (percent)	T (percent)	Identical ownership (percent)
A	55	51	55	55	55	51
B	45	49				(1)
C			45			
D				45		
E					45	
Total	100	100	100	100	100	

[1] 45 percent in P&O.

Corporations P and Q are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations R, S, and T are not members because at least 80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons.

Example (2). The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	U (percent)	V (percent)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13
	100	100

Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of a brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

Example (3). Corporations X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded from the definition of stock under section 1563 (c)). Unrelated individuals A and B own the following amounts of the class of stock entitled to vote (voting) and the total value of shares of all classes of stock (value) in each of corporations X and Y:

Individuals	Corporations	
	X	Y
A	100% voting.... 60% value.....	75% voting. 60% value.
B	0% voting.....	25% voting.

Individuals	Corporations	
	X	Y
	10% value.....	10% value.

No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent ownership requirement because A and B own more than 50 percent of the total value of shares of all classes of stock of X and Y. (The group also meets the more-than-50 percent ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

Example (4). Assume the same facts as in example (3) except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent ownership requirement because A owns more than 50 percent of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent requirement. Because no other shareholder owns stock in both X and Y, these other shareholders' stock ownership is not counted towards meeting either the more-than-50 percent ownership requirement or the 80-percent ownership requirement.

(iii) Paragraph (a) (3) of this section, as amended by T.D. [insert T.D. number of this notice when adopted], applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

* * * * *

(c) *Overlapping groups.* * * *

(2) *Brother-sister controlled groups.* * * *

(iv) * * *

Example (1).

Individuals	Corporations		
	M(percent)	N(percent)	P(percent)
A	55	40	5
B	40	20	40
C	5	40	55

* * * * *

Example (2). * * *

Individuals	Corporations				
	S (percent)	T (percent)	W (percent)	X (percent)	Z (percent)
D	52	52	52	52	52
E	40	2	2	2	2
F	2	40	2	2	2
G	2	2	40	2	2
H	2	2	2	40	2
I	2	2	2	2	40

* * * * *

(d) *Transitional rules*—(1) *In general.* Treasury decision [insert T.D. number of this notice when adopted] amended paragraph (a)(3) of this section to revise the definition of a brother-sister controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity.* (i) Under the authority of section 7805 (b), the Internal Revenue Service will treat an old group as a brother-sister controlled group of corporations for purposes of applying sections 401, 404 (a), 408 (k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before [insert date this notice is adopted as a Treasury decision] to the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entitly described in such sections (including plans, *etc.*, of corporations not part of such old group), that would result solely from the retroactive effect

of the amendment to this section by T.D. [insert number of Treasury decision adopting this notice]. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service, however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) Section 7805 (b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of section 401, 404 (a), 408 (k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and Title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other advese effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity.* In the case of a taxable year ending on or after December 31, 1970, and before [the date this notice is published as a Treasury decision], an old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after [the date this notice is published as a Treasury decision] and

(ii) No old member (A) files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group or (B) treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404 (a), 408 (k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions.* For purposes of this paragraph (d) of this section—

(i) An "old group" is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3) of this section as in effect before the amendments made by Treasury decision [insert T.D. number of this notice when adopted], that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3) of this section as amended by such Treasury decision, and

(ii) An "old member" is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group.* If—

(i) All old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31 before [insert date this notice is published as a T.D.], and

(ii) That corporation would (without regard to such paragraph) be a component member of more than one brother-sister controlled group (not including an old group) on the December 31, that corporation may make an election under that paragraph by filing an amended return on or before [insert date that is 6 months after the date this notice is published as a T.D.]. This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

Par. 3. Section 1.1563–3 is amended by revising Example (3) in paragraph (d)(3) as set forth below.

§ 1.1563–3 Rules for determining stock ownership.

* * * * *

(d) *Special rule of section 1563(f)(3)(B)* * * *

(3) *Examples.* * * *

Example (3). Unrelated individuals A and B each own 49 percent of all the outstanding stock of corporation R, which in turn owns 70 percent of the only class of outstanding stock of corporation S. The remaining 30 percent of the stock of corporation S is owned by unrelated individual C. C also owns the remaining 2 percent of the stock of corporation R. Under the attribution rule of paragraph (b)(4) of this section A and B are each considered to own 34.3 percent of the stock of corporation S. Accordingly, since five or fewer persons own at least 80 percent of the stock of corporations R and S and also own more than 50 percent identically (A's and B's identical ownership each is 34.3 percent, C's identical ownership is 2 percent), on December 31, 1970, corporations R and S are treated as component members of the same brother-sister controlled group.

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Par. 4. Section 11.414(c)–2 is amended as follows:

1. Paragraph (c)(1) is amended by striking II, singly or in combination," from paragraph (i), and by adding a new sentence at the end thereof, to read as set forth below.

2. Paragraph (e) is amended by revising Examples (4) and (5) as set forth below.

§ 11.414(c)–2 Two or more trades or businesses under common control.

* * * * *

(c) *Brother-sister group of trade or businesses under common control*—(1) *In general.* * * * The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons whose ownership is considered for purposes of the effective control requirement.

* * * * *

(e) *Examples.* * * *

Example (4). Unrelated individuals A, B, C, D, E, and F own an interest in sole proprietorship A, a capital interest in the GHI Partnership, and stock of corporations M, W, X, Y, and Z (each of which has only one class of stock outstanding) in the following proportions:

Individuals	Organizations						
	A (percent)	GHI (percent)	M (percent)	W (percent)	X (percent)	Y (percent)	Z (percent)
A	100	50	100	60	40	20	60
B		40		15	40	50	30
C					10	10	10
D				25		20	
E		5			5		
F		5			5		

Individuals	Organizations						
	A (percent)	GHI (percent)	M (percent)	W (percent)	X (percent)	Y (percent)	Z (percent)
	100	100	100	100	100	100	100

Under these facts the following brother-sister groups of trades or businesses under common control exist: GHI, X and Z; X, Y and Z; W and Y; A and M.

Example (5). The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	U (percent	V (percent)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13
	100	100

Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of a brother-sister group of trades or businesses under common control because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

Par. 5. Section 11.414 (c)–5 is amended by striking out "or (c)" in paragraph (a) and inserting in lieu thereof ", (c) or (e)" and by adding a new paragraph (e) to read as set forth below.

§ 11.414 (c)–5 Effective date.

* * * * *

(e) *Transitional rule* —(1) *In general.* The amendments made by T.D. [insert T.D. number of this document when adopted] apply to the plan years or periods described in paragraphs (a), (b), or (c), of this section, whichever is applicable.

(2) *Exception.* In the case of a plan year or period beginning before [the date this notice is published as a T.D.], if an organization—

(i) Is a member of a brother-sister group of trades or businesses under common control under § 11.414(c)–2 (c), as in effect before amendment by T.D. [insert T.D. number of this notice when adopted] ("old group"), for such plan year or period and

(ii) Is not such a member for such plan year or period because of the amendments made by such Treasury decision,

such member (whether or not a corporation nevertheless will be treated as a member of such old group for purposes of section 414(c) for the plan year or period to the extent provided in § 1.1563–1(d)(2). Also, such member will be treated as a member of an old group for all purposes of the Code for such plan year or period if all the organizations (whether or not corporations) that are members of the old group meet all the requirements of § 1.1563–1(d)(3) with respect to such plan year or period.

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

§§ 13.16 and 13.16–1 [Removed]

Par. 6. § 13.16 and § 13.16–1 are removed.

Existing Proposed Income Tax Regulations

Par. 7. Section 1.414(c)–2, published as a proposed regulation by notice of proposed rulemaking appearing in the **Federal Register** for November 5, 1975 (40 FR 51467), is hereby amended by revising and reproposing paragraphs (c)(1) and Examples (4) and (5) of paragraph (e) thereof to read as follows.

§ 1.414(c)–2 Two or more trades or businesses under common control.

* * * * *

(c) *Brother-sister group of trades or businesses under common control* —(1) *In general.* The term "brother-sister group of trades or businesses under common control" means two or more organizations conducting trades or businesses if (i) the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4) a controlling interest of each organization, and (ii) taking into account the ownership of each such person only to the extent such ownership is identical with respect to each such organization, such persons are in effective control of each organization. The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons whose ownership is considered for purposes of the effective control requirement.

* * * * *

(e) *Examples.*

* * * * *

Example (4). Unrelated individuals A, B, C, D, E, and F own an interest in sole proprietorship A, a capital interest in the GHI Partnership, and stock of corporations M, W, X, Y, and Z (each of which has only one class of stock outstanding) in the following proportions:

Individuals	Organizations						
	A (percent)	GHI (percent)	M (percent)	W (percent)	X (percent)	Y (percent)	Z (percent)
A	100	50	100	60	40	20	60
B		40		15	40	50	30
C					10	10	10
D				25		20	
E		5			5		
F		5			5		
	100	100	100	100	100	100	100

Under these facts the following brother-sister groups of trades of business under common control exist: GHI X and Z; X, Y and Z; W and Y; A and M.

Example (5). The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	U (percent)	V (percent)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13

Individuals	Corporations	
	U (percent)	V (percent)
	100	100

Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of a brother-sister group of trades or businesses under common control because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

* * * * *

Par. 8. Section 1.415(c)–5, published as a proposed regulation by notice of proposed rulemaking appealing in the **Federal Register** for November 5, 1975

(40 FR 51467), is hereby revised and reproposed by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 1.414(c)–5 Effective date.

(a) *General rule.* Except as provided in paragraph (b), (c), or (e) of this section, the provisions of § 1.414(b), § 1.414(b)–1, and §§ 1.414(c) through 1.414(c)–4 shall apply for plan years beginning after September 2, 1974.

* * * * *

(e) *Transitional rule*—(1) *In general.* The amendments made by T.D. [insert T.D. number of this document when adopted] apply to the plan years or period described in paragraphs (a), (b), or (c) of this section, whichever is applicable.

(2) *Exception.* In the case of a plan year or period beginning before [the earlier of the date this notice is published as a T.D. or the date § 11.414 (c)–2 is amended by adoption of the notice published on November 16, 1983], if an organization—

(i) Is a member of a brother-sister group of trades or businesses under common control under § 11.414(c)–2(c), as in effect before amendment by T.D. [insert earlier of T.D. adopting this notice or the T.D. amending § 11.414(c)–2 by adoption of the notice published on November 16, 1983] ("Old group"), for such plan year or period, and

(ii) Is not such a member for such plan year or period because of the amendments made by such Treasury decision,

such member (whether or not a corporation) nevertheless will be treated as a member of such old group for purposes of section 1414(c) for that plan year or period to the extent provided in § 1.1563–1(d)(2). Also, such member will be treated as a member of an old group for all purposes of the Code for such plan year or period if all the organizations (whether or not corporations) that are members of the old group meet all the requirements of § 1.5163–1(d)(3) with respect to such plan year or period.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-30790 Filed 11-15-83; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 301

[LR-290-82]

Tax Return Preparers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Income Tax Regulations under sections 6107(b) and the Regulations on Procedure and Administration under section 7216(b) of the Internal Revenue Code of 1954. The amendment under section 6107(b) relates to the retention of records of income tax returns prepared by a corporation or a partnership as an income tax return preparer. The amendment under section 7216(b) relates to disclosure to grand juries of income tax return information by the preparers of the returns.

DATES: The amendments are proposed to be effective 30 days after publication of the amendment by Treasury Decision. Written comments and requests for a public hearing must be delivered or mailed by January 16, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [290–82], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20244, Attention: CC:LR:T (202–566–3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6107(b) and the Regulations on Procedure and Administration under section 7216(b) (26 CFR Part 301). The proposed amendment to section 6107(b) designates the person required to retain records of income tax returns when the income tax return preparer is a corporation or partnership which has been dissolved. The proposed amendment to regulations under section 7216(b) clarifies that disclosure of tax return information by an income tax return preparer to a grand jury does not trigger the penalty provision of section 7216(a). These amendments are to be issued under the authority contained in sections 7216(b)(3) (85 Stat. 529, 26 U.S.C. 7216) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Discussion

Section 6107(b) provides that an income tax return preparer must retain a copy of each income tax return prepared, or a list of the taxpayers for whom such returns were prepared, available for inspection upon request for a specified 3-year period. When the preparer is a corporation or a partnership which is dissolved before the completion of the 3-year period, the question has arisen as to who must retain the above described records for inspection until the 3-year period is completed. This amendment to the regulation would place that duty upon all persons under state law who are responsible for winding up the affairs of the corporation or partnership. If no persons are designated under state law, then the proposed regulations provide that, collectively, the directors of the corporation or the general partners of the partnership shall be required to retain the records for the requisite 3-year period.

Section 7216(b) provides that the penalty provision of section 7216(a) will not apply to the disclosure or use of information by preparers of returns if the disclosure is made pursant to provisions of the code or pursuant to an order of a court. Section 7216(b)(3) gives the Secretary regulatory authority to prescribe other exceptions to section 7216(a). This amendment to the regulation would clarify that disclosure of tax return information by an income tax return preparer to a grand jury does not trigger the penalty provision of section 7216(a).

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Regulatory Flexibility Act of 1980 and Executive Order 12291

The Secretary of the Treasury has certified that this proposed amendment to the regulations would not have a significant impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major regulation subject to Executive Order 12291.

Drafting Information

The principal author of these regulations is Mary Frances Pearson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administrative practice and procedure, and payment of tax.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information and Filing requirements.

Proposed Amendments of the Regulations

Accordingly, the proposed amendments to 26 CFR Parts 1 and 301 are as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. Section 1.6107–1 (b) is amended by adding the following three sentences to the end of the flush material:

§ 1.6107–1 Income tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

* * * * *

(b) *Copy or record to be retained.*

* * *

If the person subject to the record retention requirements of this paragraph (b) is a corporation or a partnership which is dissolved before completion of the 3-year period, then all persons who under state law are responsible for the winding up of the affairs of the corporation or partnership shall be subject, on behalf of the corporation or partnership, to these record retention requirements until completion of the 3-year period. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors or general partners shall be subject, on behalf of the corporation or partnership, to the record retention requirements of this paragraph (b). For purposes of the penalty imposed by section 6695(d), such designated persons shall be deemed to be the income tax return preparer and will be jointly and severally liable for each failure.

Regulations on Procedure and Administration

PART 301—[AMENDED]

Par. 2. Section 301.7216–2 is amended as follows:

1. Paragraph (c)(2) is redesignated as (c)(3) and a new paragraph [c)(2) is added as set forth below:

2. Paragraph (d) is amended by removing the period at the end thereof and adding ", or before any grand jury which may be convened by the court."

§ 301.7216–2 Disclosure or use without formal consent of taxpayer.

* * * * *

(c) *Disclosure pursuant to an order of a court or a Federal or State agency.*

* * *

(2) A subpoena issued by a grand jury, Federal or State, or

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83–30890 Filed 11–15–83; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 493]

Wine Labeling and Advertising Regulations Under the Federal Alcohol Administration Act; Appellations of Origin and Placement of Name and Address and Net Contents

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the amendment of various regulations governing the labeling and advertising of wine.

First, ATF proposes to amend the wine labeling requirement set forth in 27 CFR 4.34(c) which provides that an appellation of origin shall appear in the same size of type and in lettering as conspicuous as the class and type designation. The amendment proposed provides that an appellation of origin shall appear in lettering "substantially as conspicuous" as the class and type designation.

Second, ATF proposes to amend the wine labeling requirement in 27 CFR 4.27 which provides that an appellation of origin shall be shown on the label of vintage wine in the same size of type and in lettering as conspicuous as the class and type designation. The proposed amendment provides that the appellation of origin need appear only "substantially as conspicuous" as the class and type designation. Additionally, ATF proposes to amend 27 CFR 4.34, to reflect the requirement in 27 CFR 4.27 that a vintage wine must be labeled with an appellation of origin other than a country.

Third, ATF proposes to amend the requirement in 27 CFR 4.32 which provides that the name and address of the bottler of wine shall appear on the brand label. The proposed amendment provides that the name and address of the bottler shall appear on any label.

Fourth, ATF proposes to amend the requirement in 27 CFR 4.32 which provides that the net content statement shall appear on the brand label or on a separate label affixed in the immediate proximity thereto on the same side of the container. The proposed amendment provides that the net content statement shall appear on any label.

Finally, ATF proposes to amend 27 CFR 4.25a to permit wine to be labeled with the name of more than one viticultural area where, in the case of overlapping areas, either partially or totally, not less than 85 percent of the volume of the wine is derived from grapes grown within the overlap area.

This notice results from a petition and a need to clarify some related issues.

DATE: Comments must be received on or before January 16, 1984.

ADDRESS: Comments should be addressed to: Chief, FAA, Wine and Beer Branch Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 493).

FOR FURTHER INFORMATION CONTACT: Roger Bowling, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202–566–7626.

SUPPLEMENTARY INFORMATION:

Type Size Requirements

Treasury Decision ATF–53 (43 FR 37672, Aug. 23, 1978; and 43 FR 54624, Nov. 22, 1978) set forth the requirement in 27 CFR 4.34(c), that an appellation of origin disclosing the true place of origin of the wine shall appear on the label in direct conjunction with, in the same size of type, and in lettering as conspicuous as the class and type designation of the wine if: (1) A grape type (varietal) is used under the provisions of § 4.23a; (2) a semi-generic type designation is employed as the type designation of the wine pursuant to § 4.24(b); or (3) a brand name or product name is qualified with

the word "brand" as required by the provisions of § 4.39(i) or (j). Prior to T.D. ATF–53, when an appellation of origin was required to be stated on a wine label, it was required to be substantially as conspicuous as the class and type designation.

The Wine Institute petitioned ATF to delay the effective date of §§ 4.34(c) and 4.39(i) from January 1, 1983, to January 1, 1985. Due to the fact that the validity of other regulations promulgated by T.D. ATF–53 was cast into doubt by *Wawszkiewicz v. Department of the Treasury*. 480 F. Supp. 739 (D.D.C. 1979), *rev'd in part and aff'd in part*, 670 F. 2d 296 (D.C. Cir. 1981), (while one of the regulations at issue was upheld by the Court of Appeals, the other regulations at issue in the case were remanded to ATF for further consideration), wine industry members could not intelligently plan the redesign of their labels in order to conform to all of the requirements set forth in the Treasury decision. The Wine Institute felt that its members should not be compelled to redesign their label again when the future of the regulations at issue in *Wawszkiewicz* is settled. In other words, the Wine Institute felt that its members should only be required to redesign their labels once in order to conform to the rules promulgated in T.D. ATF–53 and they cannot be sure what all those rules will be until the *Wawszkiewicz* matter is finalized. In accordance with the Wine Institute's petition, ATF issued a notice of proposed rulemaking which resulted in T.D. ATF–126 deferring the effective date of §§ 4.34(c) and 4.39(i) until January 1, 1985.

Not only did the Wine Institute petition for a deferral of the effective date of the above-noted regulations, they also expressed the opinion that the appellation of origin and the class and type designation should not be required to be the same size of type. They stated that this requirement was not demanded by consumers, provides no additional information concerning the origin of the grapes, and that the requirement would necessitate large-scale label changes. Subsequent to receipt of the Wine Institute's petition, ATF received petitions from Sonoma-Cutrer Vineyards and Napa Valley Vintners which requested that the requirement set forth in § 4.34(c) that the appellation of origin be stated in the same size of type as the class and type designation be changed or eliminated.

ATF has considered the views expressed by the Wine Institute, Sonoma-Cutrer Vineyards, and Napa Valley Vintners in their petitions and hereby proposes to amend § 4.34(c) to provide that when an appellation of origin is required to be shown on a wine label, it shall be "substantially as conspicuous" as the class and type designation. This action would essentially re-establish the standard which existed prior to the promulgation of the "same size of type" requirement in T.D. ATF–53. ATF believes a "substantially as conspicuous" as requirement is sufficiently stringent to provide necessary information as to the true place of origin of the wine. Moreover, the relaxation of the "same size of type" requirement will relieve wine industry members of the burden of costly label revisions to conform to this unnecessary requirement and will provide them with greater flexibility to design their labels as they deem most appropriate for the marketplace. In other words, ATF believes that the requirement that the appellation of origin be "substantially as conspicuous" as the class and type designation will balance the competing goals of ensuring that consumers are provided truthful and adequate information as to the true origin of the wines they purchase and of permitting the wine industry to market their products as they see fit. Additionally, since wine industry members are currently subject to a "substantially as conspicuous" standard because the "same size of type" requirement has been extended until January 1, 1985, this amendment will render it unnecessary for industry members to make costly label revisions in order to comply with a requirement that is not necessary to convey the information to consumers.

ATF is also considering amendments to 27 CFR 4.39(i). However, this reconsideration will be dealt with in a separate document.

Finally, ATF proposes to amend the requirement set forth in § 4.27 that when a wine is labeled with the year of harvest of the grapes, an appellation of origin must be shown in direct conjunction with the class and type designation, in the same size of type, and in lettering as conspicuous as the designation. The proposed amendment provides that the appellation of origin shall be shown in direct conjunction with the class and type designation and in lettering substantially as conspicuous as that designation. This amendment is consistent with the amendment proposed for § 4.34(c). ATF believes this "substantially as conspicuous" as requirement is sufficient to inform consumers as to the origin of the wine while at the same time is flexible enough to provide the wine industry some freedom concerning the design of their labels.

Multi-Viticultural Area Appellation of Origin

Section 4.25(e)(3) provides that a wine may be labeled with a viticultural area appellation if: (1) The appellation has been approved under 27 CFR Part 9 or by the appropriate foreign government; (2) not less than 85 percent of the wine is derived from grapes grown within the boundaries of the viticultural area; (3) in the case of American wine, it has been fully finished within the State or one of the States, within which the labeled viticultural area is located; and (4) it conforms to the laws and regulations of all the States contained in the viticultiural area.

Under 27 CFR Part 9, ATF has established several American vitucultural areas which overlap to some degree. Additionally, a number of petitions to establish American viticultural areas currently under consideration could result in the establishment of viticultural areas which overlap to various degrees. In some cases, the overlap would be such that a smaller viticultural area would be entirely contained within the boundaries of a larger area.

ATF has taken the position that when not less than 85 percent of a wine is derived from grapes grown in the area of overlap of more than one viticultural area, the wine may be labeled with the name of any one of the appropriate viticultural areas. ATF also believes that when not less than 85 percent of a wine is derived from grapes grown in the area of overlap of more than one viticultural area, the wine should be entitled to be labeled with the name of each viticultural area. For example, if viticultural areas A and B overlap to some extent and not less than 85 percent of a wine is derived from grapes grown in the area where A and B overlap, the wine may be labeled with the viticultural area appellation "A," "B," or "A–B." By permitting multi-viticultural area appellations to be shown on wine labels, consumers will be afforded more precise information concerning the derivation of the grapes used to produce a wine. That is, consumers will be able to see not merely that the grapes were grown within a viticultural area but that they were grown within some particular portion of that viticultural area.

ATF is proposing to add a new paragraph (f) to § 4.25a to permit this type of labeling.

Location of Name and Address and Net Contents Statement

Under §§ 4.32 and 4.35(a) the name of the bottler or packer of American wine and the place where bottled or packed must be stated on the brand label (the label carrying, in the usual distinctive design, the brand name of the wine). Additionally, under §§ 4.32 and 4.35(b), if wine is blended, bottled, or packed in a foreign country other than the country of origin and the country of origin is stated or otherwise indicated on the label, there must also be stated on the brand label the name of the bottler, packer, or blender, and the place where bottled, packed, or blended.

ATF believes that the name of the bottler or packer is important consumer information and hence that it should be required to be stated on bottles of wine. However, ATF believes that it is not necessary that it appear on the brand label. Consumers are knowledgeable enough to find such information whether it appears on the brand label, a label in immediate proximity thereto, or a back label. Therefore, ATF proposes to amend § 4.32 to permit the information required by § 4.35 to appear on any label. Accordingly, consumers will receive this important information as to the product while wine industry members will be afforded a degree of freedom as to its placement on bottles of wine.

Section 4.32 also provides that the net contents of a bottle of wine shall be shown on the brand label, or on a separate label affixed in immediate proximity thereto on the same side of the container. ATF originally believed it was necessary to require this information to be so prominently placed because imported wines were not subject to the same standard of fill requirements as American wines prior to the adoption of metric standards of fill. This meant that a bottle of imported wine and a bottle of American wine, though of similar wines sizes, could contain different amounts of wine as the American wine could be measured in quarts, half gallons, or other standards while the foreign wine was measured in liters or portions thereof. Presently, all wines, both imported and American, are subject to the standard of fill requirements set forth in § 4.73. Wines must be bottled in containers of a size set forth therein and the contents, in metric units, must appear on the brand label under §§ 4.32 and 4.37.

Since American and imported wines are now subject to the same standard of fill requirements and since the contents of American and imported wines must appear in metric units, ATF believes that it is no longer necessary that the net contents appear on the brand label. Since consumers will no longer see a quart of American wine next to a liter of imported wine, for example, and possibly think the bottles have equal contents if they should fail to see the contents as stated on the brand label, it is no longer necessary that the net contents be so prominently stated.

The amount of any product in a container is, of course, crucial information for any consumer. Such information must be stated on bottles of wine so that wine consumers will have adequate information to be able to purchase the amount of wine they desire and so that they may not be deceived as to the quantity of the wines they purchase. ATF believes wine consumers look for this information and are knowledgeable enough to find it whether it appears on the brand label or a back label. Therefore, ATF proposes to amend § 4.32 to require that the net contents of bottles of wine be stated on any label affixed thereto. Like the other amendments proposed herein, ATF believes this requirement will afford the wine industry a degree of freedom as to the design of their labels while ensuring that consumers are provided with essential information concerning the product.

Technical and Correcting Amendment

ATF proposes to correct a typographical error in § 4.27(b) and to amend certain language therein to more accurately state the requirements of the provisions. The first sentence of § 4.27(b) refers to a permittee who "produced and bottled or packed" wine. This should read a permittee who "produced or bottled or packed" the wine. The error will be corrected. Additionally, the provision requires that a producer, bottler, or packer, whichever the case may be, possess certain records "from the producer." It does not make sense to require that the producer possess records from the producer. Accordingly, ATF proposes a technical amendment to § 4.27(b) to provide that the producer possess the records described therein or that, if the situation involves a person other than the producer, such person possess records from the producer.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this notice of proposed rulemaking, if promulgated as a final rule, will not be a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking since it is not expected to have a significant economic impact on a substantial number of small entities. This notice of proposed rulemaking, if promulgated as a final rule, is not expected to have: Significant or secondary incidental effects on a substantial number of small entities: or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is certified under the provision of 5 U.S.C. 604(b) of the Regulatory Flexibility Act that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons. ATF requests specific comments on the following:

(a) Does the appellation of origin need to appear in the same size type as the class and type designation, or does "substantially as conspicuous" suffice?

(b) Is it necessary for the name and address of the bottler of wine to appear on the front of the container when, in may cases, the class and type designation is in direct conjunction with an appellation of origin?

(c) Is it necessary to require the net contents statement to appear on on the front of the container when wine can only be bottled in specific sizes as allowed by regulations? Would any confusion or deception arise from allowing the net contents statement to

appear on a container other than on the front of the container?

(d) In making the proposal relating to multi-viticultural area appellations of origin, ATF also considered allowing appellations of origin of no more than three viticultural areas, whether they overlapped or were contiguous. Further, if this type of multi-viticultural area appellations of origin were allowed, the percentage of the volume of the wine derived from grapes grown in each viticultural area would have to be shown on the label. That is, ATF considered authorizing winemakers to label their wines to the effect that 33 percent of the grapes came from viticultural area A, 33 percent of the grapes came from viticultural area B, and 33 percent of the grapes came from viticultural area C. This is comparable to the requirements for multi-state and multi-county appellations of origin. However, the latter appellations of origin are based on political boundaries whereas viticultural areas are established on common features and characteristics resulting in a geographically distinguishable area. Because of the nature of viticultural areas as geographically distinguishable areas, ATF is not proposing to permit appellations of origin of different viticultural areas to appear on wine labels. Such appellations of origin would, in ATF's opinion, negate the very structure of establishing viticultural areas, whether they be contiguous or hundreds of miles apart, and it would be misleading and confusing to consumers to read an appellation of origin that is comprised of different viticultural areas. However, regardless of this opinion, ATF requests comment on this issue.

All comments received on or before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future actions.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of the petitions, this notice of proposed rulemaking, and all written comments will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and wine.

Drafting Information

The principal author of this document is Roger L. Bowling, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205, 27 CFR Part 4 is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Subpart C—Standards of Identity for Wine

Paragraph 1. Section 4.25a is amended to add a new paragraph (f) relating to multi-viticultural area appellations of origin. As amended, § 4.25a(f) reads as follows:

§ 4.25a Appellations of origin (Not Mandatory before January 1, 1983).

* * * * *

(f) *Multi-viticultural area appellations.* An appellation of origin comprised of more than one viticultural area may be used in the case of overlapping viticultural areas if not less than 85 percent of the volume of the wine is derived from grapes grown in the overlapping area.

Par. 2. Section 4.27 is amended by removing the requirement in paragraph (a) that the appellation of origin and the class and type designation be the same size of type and by providing that the appellation of origin be substantially as conspicuous as the class and type designation. Section 4.27(a) is amended by revising the last two sentences to read as follows:

§ 4.27 Vintage wine.

(a) *General.* * * * The appellation shall be shown in direct conjunction with the designation required by § 4.32(a)(2), in lettering substantially as conspicuous as that designation. In no event may the quantity of wine removed from the producing winery, under labels bearing a vintage date, exceed the volume of vintage wine produced in that winery during the year indicated by the vintage date.

* * * * *

Subpart D—Labeling Requirements for Wine

Par. 3. Section 4.32 is revised by removing paragraph (c) in its entirety; and by revising paragraphs (a) and (b) to allow the name and address statements required by § 4.35 and the net content statement required by § 4.37 to appear on the brand label or back label. As revised, § 4.32 (a) and (b) reads as follows:

§ 4.32 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 4.33.

(2) Class, type, or other designation, in accordance with § 4.34.

(3) Alcohol content, in accordance with § 4.36.

(4) On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

(b) On any label:

(1) Name and address, in accordance with § 4.35.

(2) Net contents, in accordance with § 4.37.

* * * * *

Par. 4. Section 4.34 is amended by removing paragraph (c) in its entirety; by providing that the appellation of origin shall appear in lettering substantially as conspicuous as the class and type designation in paragraph (b); and by adding a new provision, paragraph (b)(4), to reflect the requirement that vintage wine must be labeled with an appellation of origin. As revised, § 4.34(b) reads as follows:

§ 4.34 Class and type.

* * * * *

(b) An appellation of origin such as "American", "California", "Napa Valley", or "Chilean", disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation if:

(1) A grape type (varietal) designation is used under the provisions of § 4.23a;

(2) A semi-generic type designation is employed as the class and type designation of the wine pursuant to § 4.24(b);

(3) A brand name or product name is qualified with the word "Brand" under the requirements of § 4.39(i) or (j); or

(4) The wine is labeled with the year of harvest of the grapes, and otherwise conforms with the provisions of § 4.27 of this part. The appellation of origin for vintage wine must be other than a country.

Signed: September 30, 1983.
Approved: October 28, 1983.

W. T. Drake,

Acting Director.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 83-30951 Filed 11-15-83; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Permanent State Regulatory Program of West Virginia; Proposal To Supersede Provision of State Law

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: This document announces and seeks public comment on proposed actions by OSM to preempt and to supercede a specific provision of West Virginia's law to eliminate the provision that a permittee and his authorized agents and employees are not liable for any injury sustained by a citizen accompanying the inspector onto the minesite.

This action is being taken because the Director has initially determined that this provision is inconsistent with section 521(a)(1) of SMCRA. The Director's determination is based on the reasons cited under Finding 27, the section titled "Secretary's Findings" found in a separate notice of final rulemaking pertaining to the West Virginia permanent regulatory program that is appearing in today's **Federal Register.**

DATES: Written comments, data or other relevant information relating to these actions concerning the West Virginia program not received on or before 4:00 p.m. on December 16, 1983 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the West Virginia program and administrative record on the West Virginia program are available.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, Charleston Field Office, Office of Surface Mining and Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION: Copies of the West Virginia program and the administrative record on the West Virginia program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20240, Telephone: (202) 343-7896

West Virginia Department of Natural Resources, Room 630, Building 3, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone: (304) 348-9160

In addition, copies of the West Virginia program are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 119 Appalachian Drive, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

For detailed background on the actions proposed in this document, see the notice of final rulemaking pertaining to the West Virginia permanent regulatory program that is also appearing in today's **Federal Register.**

Director's Findings and Proposed Actions

1. Federal Preemption

Pursuant to section 505(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR 730.11(a), the Director proposes to preempt and supersede specific wording in Section 20-6-5(g) of the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA).

The complete text of Section 20-6-15(g) of WV SCMRA is as follows:

(g) Whenever on the basis of available information, including reliable information from any person, the director has cause to believe that any person is in violation of this article, any permit condition or any regulation promulgated under this article, the director shall immediately order state inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior state inspection. The director shall notify any person who supplied such reliable information when the state inspection will be carried out. Such person may accompany the inspector during the inspection: *Provided,* That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip. Any such person accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use.

The specific wording of Section 20-6-15(g) of WV SCMRA proposed for preemption and supersession is as follows:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

This action is being taken because the director has initially determined that this provision is inconsistent with section 521(a)(1) of SCMRA. The Director's determination is based on the reasons cited under Finding 27, the section titled "Secretary's Findings" found in a separate notice of final rulemaking pertaining to the West Virginia permanent regulatory program that is appearing in today's **Federal Register.**

Inasmuch as the Secretary has disapproved the above-cited provision of the WV SCMRA and removed condition (24) of his approval of the West Virginia permanent program, the Director is now soliciting public

comment on the proposal to preempt and supersede that portion of WV SCMRA which has been found to be inconsistent with section 521(a)(1) of SMCRA.

Following the public comment period, of no objections are raised or no evidence is received showing why the aforementioned provision should not be superseded, a final notice will be published setting forth that provision of WV SCMRA which will be superseded by Federal law as required by 30 CFR 730.11(a) and section 505(a) of SMCRA.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: November 4, 1983.

J. Roy Spradley,

Acting Director, Office of Surface Mining.

[FR Doc. 83–30761 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL 2471–2]

Nevada State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In today's notice EPA is proposing to remove the conditions of approval concerning the Nevada State Implementation Plan (SIP) for the Lake Tahoe carbon monoxide (CO) nonattainment area. This Agency has determined that the State has submitted sufficient information to remedy the deficiencies in the 1979 Nonattainment Area Plan (NAP), and to verify that the CO standard was attained by December 31, 1982. This notice is also proposing to approve and incorporate into the SIP, as meeting the requirements of Part D of the Clean Air Act, those Nevada Revisions dated December 10 and 16, 1982, January 28, 1983 and May 5, 1983, which were submitted in response to the conditions.

DATE: Comments should be submitted to EPA on or before December 16, 1983.

ADDRESSES: Send any comments to: Acting Regional Administrator, Attn: Air Management Division, Air Programs Branch, State Liaison Section (A–2–2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed Nevada SIP revision and EPA's evaluation may be inspected during normal business hours at the above address or at the following location: Department of Conservation and Natural Resources, Nevada Division of Environmental Protection, 201 South Fall Street, Room 221, Carson City, NV 89710.

FOR FURTHER INFORMATION CONTACT: Barbara Maco, State Liaison Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974–7653; FTS 454–7653.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1977 required states to revise their SIPs by January 1979 for all areas that had not attained the National Ambient Air Quality Standards. These revisions were to provide for attainment of the ambient standards by December 31, 1982. Those areas which demonstrated that 1982 attainment for ozone and/or CO could not be achieved despite adoption of all reasonable available control measures could request an extension to attain the standards no later than December 31, 1987. Plan revisions were to be submitted to EPA by July 1, 1982.

The States of California and Nevada submitted separate 1979 SIP Revisions for their respective portions of the Lake Tahoe Air Basin nonattainment area. The Nevada NAP contained a CO attainment demonstration by 1982. California requested an extension for attaining the CO standard no later than December 31, 1987. On June 23, 1982, EPA conditionally approved both CO NAPs and granted an extension to California (47 FR 27065). The States were required to submit, by December 20, 1982, specific material as SIP Revisions to correct the NAP deficiencies identified by EPA in its final rulemaking. The four conditions of approval on the Nevada plan for CO required: (1) The submittal of emission reduction estimates for the control tactics, (2) a fully documented modeling analysis showing 1982 attainment, (3) written evidence of commitment to the control measures with adequate implementation schedules, and (4) allocated resources for the adopted control measures.

Description

On December 9, 1982, the Nevada Division of Environmental Protection submitted a SIP Revision intended to satisfy the conditions noted in the June 23, 1982 **Federal Register.** Later SIP submittals, dated December 16, 1982, January 28, 1983, and May 5, 1983, revised certain information in the December 9, 1983 report and provided additional technical documentation for its conclusions. All of the material responded directly to the June 23, 1982 conditions and, in so doing, updated the NAP. The specific portions of each submittal are:

A. December 9, 1982—

(1) Emission reduction estimates and/or changes in vehicular activity for the adopted control measures,

(2) A modeling analysis indicating 1982 attainment,

(3) Documentation for the modeling analysis including air quality, traffic and meteorological data,

(4) Evidence of implementation and/or further commitments for the adopted control measures,

(5) Appendix of Previous Reports, Measured Data and other official correspondence including:

(a) Resource commitments from the responsible agencies for

implementing the NAP,
(b) 1979 and 1980 Annual Reports for the Lake Tahoe Air Basin, and
(c) 1981 Nevada Air Quality Report.

B. December 16, 1982—

(1) Additional evidence of commitment to the control measures by the responsible state and/or local agencies,
(2) Additional supporting documentation for the 1982 attainment modeling analysis which inclued revised technical data on measured and modeled CO concentrations and measured traffic volumes, and a revised narrative on the calibration constant and the inputs to the model.

C. January 28, 1983—

(1) Response to EPA's preliminary evaluation, specifying documentation for calibrating the model, the mobile source emission factors, and additional traffic data.
(2) Conversion factors for the model.
(3) A revised 1982 attainment modeling analysis and supporting documentation including:
—1975, 1980–82 traffic data for the—Stateline Area, (Appendix A);
—Stateline Cold Start/Hot State Analysis, (Appendix B);
—Portions of the Highway 50 Corridor Study, June, 1979, (Appendix C);
—Reference from Transportation and Traffic Engineering Handbook (1976), (Appendix D); and
—Revised Caline 3 and Mobile 2 modeling analysis using both 27% and 50% cold start factors, (Appendix E).

D. May 5, 1983—

(1) "Stateline, Nevada, 1983 Carbon Monoxide Study"—a traffic, ambient air monitoring and predictive modeling report, and
(1) A revised analysis of the Caline 3 model verifying 1982 attainment, based on data collected in February and March of 1983.

Discussion

EPA's conditions, the State;s responses, and EPA's evaluation and proposed action are described below. The conditions are grouped and numbered in the same manner as they appeared in the June 23, 1982 rulemaking (beginning at 47 FR 27065). A more detailed discussion of EPA's findings is included in the Technical Support Document available at the addresses indicated above.

Condition 1: Submittal of emission reduction estimates for each adopted control measure or package of control measures.

State response: On December 9 and 16, 1982, the State submitted emission reduction estimates, or changes in vehicular activity for six of the nineteen control measures included in the CO plan. In the May 5, 1983 submittal, the State provided documentation to support the two implemented control measures that comprise the attainment strategy (i.e., traffic flow improvements and improved pedestrian facilities).

EPA Evaluation: The State has provided satisfactory documentation for the increased vehicle speeds and resulting emission reductions from the two implemented control measures needed to demonstrate attainment.

Condition 2: Submittal of a documented modeling analysis indicating attainment by 1982 based upon legally adopted control measures.

State Action/Response: The December 9, 1982 submittal provided evidence that the control strategies necessary for attainment have been implemented. The January 28 and May 5, 1983 documents contained modeled 1982 attainment analyses which were verified by worst-case monitored CO data.

EPA Evaluation: The 1982 attainment modeling analysis and supporting documentation in the January 28 and May 5, 1983 plan revisions substantially conforms to EPA modeling requirements for CO nonattainment areas and satisfactorily demonstrated attainment of the CO standard by December 31, 1982. Data derived from the microscale monitoring program are also acceptable for verifying attainment. The State must regularly assess projected growth and the effectiveness of adopted control strategies for this area to assure continued maintenance of this standard.

Conditions 3 and 4: Submittal of written evidence that all adopted measures are supported by sufficient implementation commitments or that adopted schedules for obtaining such commitments will ensure that all measures will be implemented consistent with Reasonable Further Progress. As an alternative, the State could have submitted equivalent control strategies supported by commitments and full legal adoption. Also, the submittal of evidence of the necessary resource commitments to implement the NAP.

State Response: On December 9 and 16, 1982, the State submitted evidence that those measures necessary for attainment have been fully implemented. Evidence of State and local agencies' commitment and allocated resources to many of the additional measures was also submitted.

EPA Evaluation: Sufficient evidence was provided to verify implementation of the control measures needed to attain the CO standard by 1982. No action is being taken on the measures not implemented for which commitments have not been submitted. These measures are not needed for attainment.

EPA Proposed Action

Based upon EPA's evaluation of the materials submitted by the State of Nevada, the following activities are proposed:

(1) Approve the SIP revisions submitted on December 9, 1982, December 16, 1982, January 28, 1983, and May 5, 1983, and incorporate them into the SIP under Section 110 of the CAA.

(2) Rescind the four conditions of approval of the Nevada portion of the Lake Tahoe Air Basin CO nonattainment area plan from 40 CFR 52.1474.

Full approval will confirm EPA's earlier action approving the rescission of the indirect source review program from the Nevada SIP. (Reference 47 FR 27070 dated June 23, 1982 for further information.) Interested parties are invited to comment on this proposed action. Comments should be submitted to the EPA Region 9 Office.

The Administrator has certified that SIP actions do not have a significant economic impact on a substantial number of small entities (see 4 FR 8709). The Office of Management and Budget has exempted this rulemaking from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental regulations, Incorporation by reference.

Authority: Secs. 110, 129, 171 to 178, and 301(a), Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7503 and 7601(a)).

Dated: October 19, 1983.

Charles W. Murray,

Acting Regional Administrator.

[FR Doc. 83-30858 Filed 11-15-83; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[A-5-FRL 2469-3]

Indiana; Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA proposes to change the sulfur dioxide (SO_2) designation for

Franklin, Lawrence, Pike, Warren, and Washington Townships in Marion County, Indiana from nonattainment for the primary SO_2 National Ambient Air Quality Standards (NAAQS) to attainment. This redesignation is based on a request from the State of Indiana and on the supporting data the State submitted. As a part of the supporting data, Indiana has submitted as a revision to its State Implementation Plan (SIP), revised SO_2 emission limits for eight sources within the area being proposed for redesignation. EPA is proposing to approve the revised emission limits for these eight sources. EPA is also proposing to approve the evidence submitted with the redesignation request as sufficient to meet the conditions for these five townships on EPA's March 12, 1982 conditional approval of the Marion County SO_2 SIP (47 FR 10813). Finally, EPA is proposing to deny the remainder of the State's request that EPA redesignate Center, Decatur, Perry, and Wayne Townships in Marion County from primary nonattainment to attainment because the State has not shown that the attainment and maintenance of the SO_2 NAAQS are presently assured in these townships.

DATE: Comments on this revision and on the proposed EPA action must be received by December 15, 1983.

ADDRESSES: Copies of the redesignation request, the revised emission limits, technical support documents, and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Comments on these proposed revisions should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section (5AR–26), Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Robert Miller, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Chicago, Illinos 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION:

Marion County Redesignation

Under section 107 of the Clean Air Act (Act), EPA has designated certain areas in Indiana as not attaining NAAQS for SO_2.[1] See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982. These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable Part D SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). These area designations may be revised whenever the data warrant.

EPA's criteria for data that warrant redesignating an area are set out in the April 21, 1983 memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, entitled "Section 107 Designation Policy Summary." In general, a change from a primary nonattainment designation for SO_2 to attainment must be supported by either:

(1) Eight consecutive quarters of recent representative ambient data which show no violations of the appropriate NAAQS, or

(2) Four consecutive quarters of the most recent ambient data which show both (a) no violation of the appropriate NAAQS and (b) air quality improvement that results from legally enforceable emission reductions.

In addition to ambient data, SO_2 redesignations generally require dispersion modeling employing the legally enforceable SO_2 SIP limits. If both the modeling and monitoring indicate that the SO_2 NAAQS are protected by the enforceable SIP emission limits and if sources within the area are meeting these limits, then the area may be redesignated from nonattainment to attainment.

On April 16, 1982, the Indiana Air Pollution Control Board (IAPB) submitted a request to redesignate all of Marion County from primary nonattainment to attainment for SO_2. The request was supported by all available monitor data and by air quality modeling for the major SO_2 sources in the eastern and northern portions of the county. In letters dated July 16, 1982 and September 1, 1982, EPA notified the State that insufficient data were presently available to support the entire redesignation request, particularly for the central and southwestern portions of the Indianapolis area.

On November 3, 1982, the IAPCB submitted a modified request to redesignate five of the nine townships (Pike, Washington, Lawrence, Warren, and Franklin) in Marion County to attainment for SO_2 (without withdrawing their initial request for full county attainment). The submittal contained technical support materials prepared by the City of Indianapolis Air Pollution Control Division (dated October 25, 1982) which includes the relevant interagency correspondence and air quality computer dispersion modeling results for the eight major SO_2 sources located in these five townships.

On March 3, 1983 and August 17, 1983, in support of the redesignation request, the IAPCB submitted operating permits [2] for the following eight SO_2 sources as revisions to Indiana's SO_2 SIP: Amtrak, Chrysler Corporation (Shadeland and Avenue Plant), Ford Motor Company, Fort Benjamin Harrison, International Harvester Company, Rock Island Refining Corporation, Western Electric Company, Inc. and Refined Metals. The operating permits establish SO_2 emission limits for these sources which are consistent with the City of Indianapolis' SO_2 Regulation, IV–4, but which are more stringent than Indiana's SO_2 limits of 6.0 pounds per million British Thermal Units (lbs/MMBTU). With the exception of Refined Metals and two sources at Rock Island Refining, the permits regulate industrial boilers and require SO_2 emission limits ranging from 2.43 lbs/MMBTU to 3.3 lbs/MMBTU. Refined Metal's blast furnace must meet an SO_2 emission limit of 10.8 lbs/ton. Rock Island Refining's FCC must meet a limit of 3.92 lbs/ton and its sulfur recovery unit a limit of 9.45 lbs/100 lbs of sulfur. On March 28, 1983, the City of Indianapolis submitted a supplemental modeling run to support the Rock Island Refinery permits.

EPA has reviewed the monitor data submitted for Marion County and has found that it does not show any violations of the SO_2 NAAQS in the last 8 quarters. Within the area EPA is proposing for redesignation, these data consist of two monitors in Washington Township and one in Pike. However, because EPA recognizes that a small number of ambient monitors is usually not representative of the air quality for

[1] The primary SO_2 NAAQS is violated when, in a calendar year, either: (1) The annual arithmetic mean value of monitored SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1,300 $\mu g/m^3$ more than once.

[2] EPA will discuss proposing to approve the emission limitations within the operating permits as a revision to the SIP later in this notice.

the entire area if an area is dominated by point sources, EPA also requires modeling analysis of SO_2 areas being redesignated.

EPA has reviewed the modeling analysis for the five townships, i.e., Franklin, Lawrence, Pike, Warren, and Washington, and has found that it is consistent with EPA modeling guidance and satisfies EPA's criteria for redesignation of SO_2 nonattainment areas to attainment (April 21, 1983 memorandum from Sheldon Meyers). The analysis included all major SO_2 sources in these townships at their proposed SO_2 emission limits. In a June 14, 1983 letter, the City of Indianapolis stated that the eight SO_2 sources are currently in compliance with their operating permit limits. Based on the State's request, the ambient data, the modeling data, and the City's statement concerning the sources' compliance, EPA is proposing to redesignate Franklin, Lawrence, Pike, Warren, and Washington Townships from primary nonattainment to attainment for the SO_2 NAAQS.

The State did not provide a comparable modeling analysis for the remaining four townships, i.e. Center, Decatur, Perry, and Wayne. These townships contain the larger utility and industrial SO_2 sources in the county. It is EPA's understanding that the City of Indianapolis is currrently developing a revised SO_2 control strategy for this portion of Marion County. Until such time as all necessary data are submitted, including modeling and compliance data, whch show that NAAQS are assured in these four townships, EPA can not redesignate them to attainment. EPA, therefore, is proposing to deny the State's request that these four townships be designated attainment.

Marion County SIP

In 1974 Indiana adopted a revised statewide SO_2 regulation, APC 13.[3] EPA approved this regulation as a revision to the Indiana SO_2 SIP on August 24, 1976 (41 FR 35677).[4] Indianapolis adopted for county purposes the comparable regulation, IV–4.[5] Both the State regulaton, when combined with the attainment status regulation APC 23, and the Indianapolis regulation limit emissions from sources in Marion County to between 6.0 and 1.2 lbs/MMBTU, depending upon the size and characteristics of the source.

In 1979, Indiana adopted and submitted to EPA as a revision to the SIP a revised statewide SO_2 regulation, APC–13. This regulation superseded for State purposes all previous SO_2 regulations in Indiana. With respect to Marion County, 1979 APC 13 established a 6.0 lbs/MMBTU emission limitation for most sources in Marion County, except it set lower specific emission limits for five sources in the County. The City of Indianapolis did not adopt a comparable regulation and presently retains the more stringent emission limits of their rule IV–4.

EPA proposed to conditionally approve[6] 1979 APC 13 for Marion County on March 27, 1980 (45 FR 20432). Subsequently, Indiana recodified 1979 APC 13 as 325 IAC Article 7. EPA conditionally approved 325 IAC Article 7 for Morion County on March 12, 1982 (47 FR 10813).[7]

As stated earlier, on November 3, 1982, the State submitted a request to redesignate five townships in Marion County to attainment for SO_2. The submittal contained technical support materials prepared by the City of Indinapolis Air Polluton Control Division (dated October 25, 1982) which included air quality computer dispersion modeling results for the eight major SO_2 sources located in these five townships. This modeling predicted attainment of the NAAQS in these five townships, but was based on the more stringent emission limitation contained in Indianapolis' IV–4. EPA informed the State that in order to have an approvable redesignation request based on this modeling, the State would have to adopt these more stringent emission limitations and submit them to EPA as a revision to the SIP.

Therefore, the State did adopt these emission limitations and, on March 3, 1983 and August 17, 1983, submitted as revisions to Indiana's SO_2 SIP these emission limits for the eight SO_2 sources. The sources are Amtrak, Chrysler Corporation (Shadeland Avenue), Ford Motor Company, Fort Benjamin Harrison, International harvester Company, Rock Island Refining Corporation, Western Electric Company, Inc., and Refined Metals. The operating permits establish SO_2 emission limits for these sources which are consistent with the City of Indianapolis' SO_2 Regulation, IV–4, but which are more stringent than those contained in 325 IAC Article 7.

These SO_2 limits are:

Source and description	lbs/MMBtu	lbs/ton	lbs/100 lbs of S	lbs/hour
Amtrak: Boilers No. 61 and No. 62	3.30			208.15
Chrysler Corporation (Shadeland):				
Boiler No. 1	2.82			109.98
Boiler No. 2	2.82			109.98
Boiler No. 3	2.82			109.98
Boiler No. 4	2.82			109.98
Ford Motor Company:				
Boiler No. 1	2.43			177.38
Boiler No. 2	2.43			354.77
Boiler No. 3	2.43			354.77
Fort Benjamin Harrison:				
Boiler No. 1	2.92			151.84
Boiler No. 2	2.92			151.84
Boiler No. 3	2.92			151.84
Boiler No. 4	2.92			151.84
International Harvester Company:				
Boiler No. 1	2.98			193.72
Boiler No. 2	2.98			193.72
Boiler No. 3	2.98			193.72
Refined Metals: Blast furnace		10.8		64.8
Western Electric Company, Inc.:				
Boiler No. 2	2.52			189.06
Boiler No. 3	2.52			189.06
Boiler No. 4	2.52			189.07
Boiler No. 5	2.52			252.07
Rock Island Refining Corporation:				
H–H1	1.92			56.46
H–H2	1.92			56.46
H–H3	1.92			38.38
P–H1	1.92			69.03
P–H2	1.92			82.12
P–H3	1.92			30.32
P–H4	1.92			33.19
P–H5	1.92			9.98
Alky Reboiler	1.92			53.15
Crude Heater	1.92			268.05
Vacuum Heater	1.92			99.20
Sulfur Recovery			9.45	
FCC (Proc)		3.92		823.26
CO Boiler	1.92			
FCC Chg Htr	1.92			88.26
GH–1	1.92			81.36

EPA has reviewed these emission limitations in conjunction with Indiana's redesignation request and has found

[3] The Indiana courts have held that the State improperly adopted this regulation and, therefore, have invalidated it. See *Indiana Environmental Management Board v. Indiana-Kentucky Electric Corp.*, 393 N.E. 2d 213 (Ind. App. 1979).

[4] The United States Court of Appeals for the Seventh Circuit has recently found that APC 13 is not federally enforceable. See *Sierra Club v. Indiana-Kentucky Electric Corporation and Indiana & Michigan Electric Company*, Slip Opinion dated August 30, 1983, Case Nos 81–1822 and 81–2173.

[5] The City of Indianapolis Air Pollution Contol Division has the authority to regulate emissions throughout all of Marion County.

[6] For more detail on EPA's conditional approval policy see 44 FR 38583 (July 2, 1979) and 44 FR 67182 (November 23, 1979).

[7] EPA conditionally approved 325 IAC Article 7 for Marion County, among other Counties, with certain exceptions. These exceptions are that: 1) it disapproved the compliance timetable in 325 IAC 7–1–6 for sources with identical or relaxed emission limitations from those contained in the previously approved SIP and 2) it did not take action on the 30-day compliance methof contained in 325 IAC 7–1–3 EPA approved the compliance timetable in 325 IAC 7–1–6 for sources receiving more stringent emission limits EPA did not take action on 325 IAC 7–1–3 as it applies to 30-day averaging, based on EPA's February 14, 1980 notification that it was considering the general concept of a 30-day averaging compliance technique and other issues relating to the variability of the sulfur content of fuels (45 FR 9994). The conditions imposed upon EPA's approval of Marion County were based on correction of modeling deficiencies. EPA understands that the State is planning to meet these conditions by submitting a revised modeling analysis, including changed, enforceable emission limitations, if necessary.

that the SO_2 NAAQS are attained and will be maintained at these limits. EPA, therefore, is proposing to approve the limits as a portion of the Part D SIP in Marion County. EPA notes that, although these limits are more stringent than those currently contained in the SIP, they have been constantly in effect in Indianapolis since the date compliance with 1974 APC 13 was required. Therefore, continuing to meet these emission limitations should cause no significant change in emissions in Marion County.

Finally, as noted before, EPA's March 12, 1982 approval of the Marion County SO_2 SIP was conditioned on the State correcting certain enumerated modeling deficiencies. Although the State did not choose to correct the specific modeling deficiencies enumerated in the March 12, 1982 rulemaking, it did submit an entirely new modeled strategy for the five townships of Franklin, Lawrence, Pike, Warren and Washington. This new strategy does meet all of EPA's requirements for an approvable Part D plan and, therefore, the March 12, 1982 conditions are no longer relevant in these five townships. EPA is proposing to delete these nonapplicable conditions from the SIP for these five townships. However, these conditions remain relevant and applicable for the other four townships in Marion County.[8]

Conclusion

EPA today is proposing four actions relative to SO_2 in Marion County, Indiana:

1. It is proposing to redesignate Franklin, Lawrence, Pike, Warren, and Washington Townships in Marion County from nonattainment of the primary SO_2 standards to attainment.
2. It is proposing to deny Indiana's request that the remainder of the County, i.e., Center, Decatur, Perry, and Wayne Townships, be redesignated to attainment for SO_2 from primary nonattainment.
3. It is proposing to adopt revised emission limits for eight sources in Marion County.
4. It is proposing that the conditions on EPA's approval of the SO_2 SIP for Franklin, Lawrence, Pike, Warren, and Washington Townships are no longer relevant and, therefore, is proposing to remove them from its approval of these five townships.

If EPA ultimately rulemakes on these townships as proposed above, 325 IAC Article 7, as approved in part on March 12, 1983 and with the exception of the source specific emission limitations listed above, will remain applicable and in force in Franklin, Lawrence, Pike, Warren, and Washington Townships.

EPA is providing a thirty day comment period on this portion of the State's Part D SIP and redesignation request, because until the Part D SIP for these five townships is fully approved, they remain vulnerable to any nationwide sanctions which may be imposed in response to EPA's February 3, 1983 proposal. Additionally, EPA believes that thirty days is ample time for the public to review and comment on today's proposal.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals and redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovermental relations.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107, 110, 172 and 301(a), Clean Air Act, as amended (42 U.S.C. 7407, 7410, 7502, and 7601(a))

Dated: September 29, 1983.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 83-30750 Filed 11-15-83; 8:45 am]

BILLING CODE 6560-50-M

[8] On February 3, 1983, EPA proposed for public comment certain possible sanctions which could be imposed on areas such as Marion County where conditions of approval were not met in a timely manner (48 FR 4972). If EPA ultimately rulemakes as proposed today, any sanctions would not apply in Franklin, Lawrence, Pike, Warren, and Washington Townships.

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40 CFR Part 180

[OPP-300081; PH-FRL 2470-2]

Isophorone; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that isophorone be exempted from the requirement of a tolerance when used as a solvent and cosolvent in pesticide formulations. A broadening of the regulation was requested by Rohm and Haas Co., and the removal of restrictions was proposed by the Agency.

DATE: Written comments must be received on or before December 16, 1983.

ADDRESS: By mail, submit comments to:
Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
In person, deliver comments to:
Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:
By mail:
N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number:
Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Rohm and Haas Co., the Administrator proposes to amend 40 CFR 180.1001(d) by expanding the exemption from the requirement of a tolerance for isophorone as a solvent in pesticide formulations to cover all crops and to remove the existing restrictions on use. Currently, isophorone is exempted from the requirement of a tolerance for use as a solvent and cosolvent for formulations used before the crop emerges from the soil; for post-emergence herbicide use on rice, wheat, barley, oats, and rye before the crop begins to head; and for post-emergence use of beets (sugar beets and table beets) and spinach.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(d), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the

substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and othe scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient: Isophorone.

Name and address of requestor: Rohm and Haas Co., Philadelphia, PA 19105.

Bases for approval: Isophorone is cleared under 21 CFR 175.105 as a component adhesive and is deemed generally recognized as safe (GRAS) by the Fragrances and Extractives Manufacturers Associaton. It is currently exempted from the requirement of a tolerance under 40 CFR 180.1001(d) for certain crops only. Based on results of 90-day dog and rat studies with no-observed-effects levels (NOEL's) of 150 milligrams per kilogram of body weight per day (mg/kg/day) and 300 mg/kg/day, respectively (6,000 parts per million (ppm) each, the highest levels tested) and the determination that the maximum residue levels (e.g., 10 ppm at treatment declining to 1 ppm 30 days after treatment) are not considered to be toxicologically significant, it is now proposed to broaden 40 CFR 180.1001(d) by removing existing limitations on crops and use, as discussed above, for isophorone as a solvent and cosolvent in pesticide formulations.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP–300081]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 4, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by revising the listing for isophorone, as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Isophorone (CAS Reg. No. 78–59–1).		Solvent, cosolvent.
* * * * *		

* * * * *

[FR Doc. 83–30859 Filed 11–15–83; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standard; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Roger Ohlrich of Washington, D.C., asking for the issuance of a motor vehicle safety standard which requires that both front and rear brakes on a motorcycle be operated by a single actuator, and that actuator be located so as to be operated without a shift of weight or balance by the rider. The agency is denying this petition because the state of the art of current automatic load proportioning or antilock systems for motorcycles is not sufficiently advanced to propose such systems. The agency, however, intends to monitor their development in its search for better motocycle braking systems.

FOR FURTHER INFORMATION CONTACT: Duane Perrin, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2800).

SUPPLEMENTARY INFORMATION: The agency received an undated petition from Roger Ohlrich of Washington, D.C., asking for rulemaking responsive to a problem he believed inherent in current motorcycle braking systems. On these motor vehicles the front brakes are hydraulic, and activated by a lever controlled by the right hand. The rear brake, which is mechanical, is activated by the operator's right foot. Instruction for the actuators require that they be activated simultaneously. From his experience as a motorcycle operator Mr. Ohlrich stated that there are times when an operator needs to adjust the throttle (with the right hand) at the same time that the front brake should be applied, and that motion of the hand to accomplish both within a short time frame upsets the balance of the machine as well as its steering. Accordingly, Mr. Ohlrich requested rulemaking to require that motorcycles be equipped with a single actuator operating both brakes simultaneously or require a better method, by other, means, of vehicle braking.

The agency is aware of Mr. Ohlrich's concern. Twowheeled motorcycles generally are equipped with separate controls for the front and rear brakes. The use of separate controls allows an experienced driver to independently modulate front and rear brake applications to approach optimum braking on both wheels simultaneously. This requires skill as load and friction conditions are constantly changing, and if the front brakes are applied too hard, the machine may capsize. Thus, a single control would be of greatest benefit to novice operators.

However, a single control, in the agency's view, could result in an overall

decrease in braking capability for more experienced riders. If a single control were to be used with present brake systems, a certain distribution of braking between the front and rear wheels would have to be selected. If the system were being designed to give good performance on dry roads, the braking would have to be biased towards the front wheel to accommodate the high load transfer that occurs during hard braking on a dry road. That same motorcycle, however, would be dangerous if ridden on a wet or icy road because the front wheel would be overbraked and would lock up, resulting in a capsize. Conversely, if the system were designed to give good wet road performance, stopping performance on dry roads would be poor because front wheel braking would be insufficient.

The best of both braking worlds could be achieved by either automatic load proportioning or antilock systems to prevent unwanted wheel lockup. Both NHTSA and the industry have been conducting research into such advanced concepts for motorcycle brake systems, and a few prototypes have been built. For the agency to require that motorcycles be equipped with such systems would be to require hardware that exists only in experimental form and has not been sufficiently tested. Thus, such a requirement is premature, and Mr. Ohlrich's petition is denied.

The engineer and attorney responsible for this notice are Duane Perrin and Taylor Vinson, respectively.

(Secs. 103 and 119, Pub. L.89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on November 9, 1983.

Kennerly H. Digges,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-30793 Filed 11-15-83; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES COMMITTEE

50 CFR Parts 450, 451, 452, and 453

Rules for Applying for Endangered Species Act Exemptions and for Endangered Species Committee Consideration of Such Applications.

AGENCIES: Endangered Species Committee, Department of the Interior, Department of Commerce.

ACTION: Proposed rules.

SUMMARY: These proposed rules implement the changes in the exemption process made by the Endangered Species Act Amendments of 1982, enacted on October 13, 1982. Existing rules for the Endangered Species Committee (the Committee) under the Endangered Species Act of 1973, as amended, were published April 4, 1980 (45 FR 23354). These proposed rules cover the process from the time of application to the final determination by the Committee. Because initial action on an application involves action by the Secretary of the Interior or Commerce, these proposed rules are issued by the Committee, as well as by both Secretaries.

DATE: Comments on these proposed regulations must be submitted by January 3, 1984.

ADDRESS: Please send comments to the Chairman, Endangered Species Committee, c/o Office of Policy Analysis, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jon H. Goldstein, Office of Policy Analysis, Room 4423, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; 202-343-7258.

SUPPLEMENTARY INFORMATION:

The Exemption Process

The Endangered Species Act Amendments of 1978 (Pub. L. 95-632), enacted on November 10, 1978, established a procedure for obtaining exemptions from Section 7 of the Endangered Species Act. This procedure was amended by the 1979 Amendments to the Act (Pub. L. 96-159) enacted on Decembr 28, 1979 and was further amended by the 1982 Amendments to the Act (Pub. L. 97-304).

Exemption Application

Section 7(a)(2) requires Federal agencies to insure, in consultation with the Secretary of the Interior or Commerce, that their actions are not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify critical habitats. Applications for exemption from this requirement may be made by a Federal agency, by the Governor of a State in which a proposed action would occur, or by a person whose permit or license application has been denied primarily because of section 7(a)(2) considerations. An application by a license or permit applicant may be made following such an administrative denial, whether or not that denial is subject to administrative review within the permitting or licensing agency. However, applicants may not pursue both an exemption and a further administrative review simultaneously. An application is to be directed to the appropriate Secretary, who evaluates it to determine if certain criteria are met. If they are, the Secretary prepares a report to the Endangered Species Committee, which must then decide on whether the exemption should be granted.

These regulations implement sections 7(e) through (*l*) of the Act.

Threshold Review: Upon receipt of an application, the Secretary has 10 days to determine if the applicant is qualified, the application is timely, and certain minimum information has been provided. The Secretary has 20 days from the date of application (or a longer time agreed upon with the applicant) to conclude his threshold review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and the exemption applicant have refrained from making any irreversible or irretrievable commitment of resources prohibited by Section 7(d); and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith, and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

Under the 1978 Amendments, these determinations were made by a specially appointed review board. The 1982 Amendments modified the process by eliminating the review boards and substituting the Secretary as the authority responsible for the threshold determinations. The Amendments modified the criteria by adding the words "to the extent determinable" in criteria (2) and by eliminating a fourth criteria (whether an irresolvable conflict exists). The time period for making the determinations was shortened from 60 to 20 days. If the Secretary makes affirmative determinations on all three questions, he must prepare a report for the Endangered Species Committee. If the Secretary detemines that the application fails to meet these requirements, the Secretary shall notify the applicant in writing and the process shall terminate. Any determination by the Secretary that the exemption applicant has not met one of the threshold requirements is final agency

action and may be appealed to a Federal court.

Report to Committee: If the Secretary determines that all three requirements are met, he must submit a report to the Committee within 140 days after making the determination, discussing:

(1) The availability of reasonable and prudent alternatives to the proposed action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(2) A summary of the evidence concerning whether or not the proposed action is in the public interest and is of national or regional significance;

(3) Appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(4) Whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by section 7(d).

The nature of the Secretary's report to the Committee is the same as that formerly required to be prepared by the review board. However, the 1982 Amendments specify that the Secretary's report must be based on the record of a hearing conducted by an Administrative Law Judge. The Administrative Law Judge is responsible for assuring that all concerned parties have the opportunity to contribute to the record. Endangered Species Committee: Sections 7(e) and 7(h) require the Endangered Species Committee to review all applications submitted to it by the Secretary and to determine whether or not to grant exemptions. The Endangered Species Committee is composed of:

(1) The Secretary of the Interior, who is the Chairman;

(2) The Secretary of Agriculture;

(3) The Secretary of of the Army;

(4) The Chairman of the Council of Economic Advisors;

(5) The Administrator of the Environmental Protection Agency;

(6) The Administrator of National Oceanic and Atmospheric Administration; and

(7) A person from each affected State, as determined by the Secretary, or if no State is affected, an otherwise qualified individual, appointed by the President for each exemption application.

The Committee must determine whether or not to grant an exemption within 30 days after receiving the Secretary's report. An exemption requires an affirmative vote of five or more Committee members voting in person. To grant an exemption, the Committee must:

A. Determine that—

(1) There are no reasonable and prudent alternatives to the proposed action;

(2) The benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat and the action is in the public interest;

(3) The action is of regional or national significance; and

(4) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and

B. Establish reasonable mitigation and enhancement measures that are necessary and appropriate to minimize the adverse effects of the agency action upon the species or critical habitat concerned.

Any final determination by the Committee on A. and B. is final agency action and subject to judicial review under Chapter 7 of Title 5 of the United States Code.

If an exemption is granted by the Committee, the exemption applicant must carry out and pay for the mitigation and enhancement measures ordered by the Committee. The exemption applicant also must report to the Council on Environmental Quality annually until the mitigation and enhancement measures are completed.

Sections 7(e) and 7(h) authorize the Committee to hold hearings, take testimony, receive evidence, request information, use the United States mails as a Federal agency, detail Federal agency personnel, obtain administrative support services from the General Service Administration, promulgate and amend rules, regulations and procedures, issue and amend orders, and issue subpenas. All meetings and records of the Committee shall be open to the public.

The 1982 Amendments reduced the time for the Committee to act from 90 days to 30 days after receiving the Secretary's report. The Amendments also added the fourth determination (commitment of resources) to those the Committee must make.

Description of Rulemaking

These rules are published in proposed form. Interested persons may submit written comments, suggestions, or objections regarding the proposed revisions to the location identified in the Addresses section of this preamble. Comments must be received on or before January 3, 1984.

Executive Order 12291 and the Regulatory Flexibility Act

It has been determined that these revisions do not constitute a "major" rule under the criteria established by Executive Order 12291. Sponsor costs will vary with each application and are dependent on the applicant's level of effort. Based on experience to date, only 1–2 applications are expected per year. Thus, the cost per application would have to approach $50 million for the $100 million threshold to be met. Given expected Federal costs of less than $150,000 per application, the likelihood of applicant costs over 300 times as great is remote. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. Although small entities could face proportionately higher administrative costs, those costs are not expected to be significantly higher. The number of small entities applying for exemptions is expected to be few or none.

Paperwork Reduction Act

The information collection requirements contained in Parts 451 and Parts 452 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

Environmental Effects

An environmental assessment (EA) analyzing the potential impacts of the proposed rules upon the human environment was prepared by the staff of the Committee. Based on this EA a finding of no significant impact (FONSI) has been made. The EA and FONSI are available for review at the Office of Policy Analysis, Room 4423, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240. On the basis of the EA and the FONSI an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C) is not required.

Drafting Information

The primary authors of these regulations are Robert Moll and John Trezise, Office of the Solicitor, Department of the Interior, and James Douglas and Jon H. Goldstein, Office of Policy Analysis, in consultation with staff of the Secretary of Commerce and the Federal members of the Endangered Species Committee.

List of Subjects in 50 CFR Parts 450, 451, 452, and 453

Administrative practice and procedure, Endangered and threatened wildlife, Fish, Plants (agriculture).

These regulations are issued under the authority of the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.* Accordingly, Chapter IV of Title 50 is proposed to be amended to revise Subchapter C, Parts 450, 451, 452, and 453 as set forth below:

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

PART 450—GENERAL PROVISIONS

Sec.
450.01 Definitions.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended.

§ 450.01 Definitions.

The following definitions apply to terms used in this subchapter.

(1) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.

(2) "Agency action" means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

(3) "Alternative courses of action" means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

(4) "Benefits" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

(5) "Biological assessment" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

(6) "Biological opinion" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

(7) "Chairman" means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

(8) "Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

(9) "Critical Habitat" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

(10) "Destruction or adverse modification" is defined at 50 CFR 402.02.

(11) "Federal agency" means any department, agency or instrumentality of the United States.

(12) "Irreversible or irretrievable commitment of resources" means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

(13) "Jeopardize the continued existence of" is defined at 50 CFR 402.02.

(14) "Mitigation and enhancement measures" means measures, including live propagation, transplantation and habitat acquisition and improvement, necessary and appropriate (i) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (ii) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

(15) "Permit or license applicant" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

(16) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

(17) "Proposed action" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

(18) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

(19) "Service" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

(20) "To the extent that such information is available to the applicant" means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

PART 451—APPLICATION PROCEDURE

Sec.
451.01 Definitions.
451.02 Applications for exemptions.
451.03 Endangered Species Committee.

Authority: Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, D.C. 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20030.

(c) *Who may apply.* (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary's opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned denies the permit or license application, whether or not that denial is subject to administrative review within the permitting or licensing agency. However, an applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. For an exemption application to be considered, it must be submitted within 90 days after the date

of the denial of the permit or license application.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought from or by the Federal agency, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s) license(s) or other legal requirement(s) which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency and by the permit or license applicant, to the extent known.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A list of resources committed by the agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in the Federal agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirement(s) which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consulation process carried out pursuant to 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A list of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in the Federal agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirement(s) which have been satisfied or obtained, before it can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to 7(a) of the Act, to the extent that such information is available to the Governor.

(viii) A description of all alternatives considered by the Federal agency and the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating 7(a)(2) of the Act.

(ix) A list of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, permit or license applicant, or Governor, must also submit the following:

(i) A full statement of the nature and the extent of the benefits of the proposed action.

(ii) A full discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A full discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A full statement explaining why the proposed action is in the public interest.

(v) A full explanation of why the action is of regional or national significance.

(vi) A full discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) *Review of the application by the Secretary.*

(1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with requirements set forth in § 451.02 (c), (d) and (e).

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with § 451.02 (c), (d) and (e). If the Secretary rejects an application because it does not contain the information required by section 451.02(e), the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in § 451.02(d).

(3) If the Secretary finds that the application meets the requirements of § 451.02 (c), (d), and (e), he will consider the application in accordance with Part 452.

(g) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02.

(h) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the **Federal Register** (1) Announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will mail copies of the **Federal Register** notice to each member of the Committee.

(i) The information collection requirements contained in Part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 451.03 Endangered Species Committee

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.*

(1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State, within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint an individual to the Endangered Species Committee on or before 30 days after the application for exemption was submitted.

PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY

Sec.

452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Secretary's report.
452.05 Hearing.
452.06 Parties and intervenors.
452.07 Separation of functions and ex parte communications.
452.08 Submission of report.
452.09 Consolidated and joint proceedings.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Threshold determinations.* Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources, and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) *Burden of proof.* The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) *Negative finding.* If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary's denial shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(d) *Positive finding.* If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) *Secretary of State opinion.* The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Secretary's report.

(a) *Contents of the report.* If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources, if the Secretary, in his threshold review, was unable to make such a determination.

(b) *Preparation of the report.* The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) *Hearings.* (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by § 451.02(e)(5). This information will be made part of the record.

(b) *Prehearing conferences.* (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter

which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Hearings and prehearing conferences will be announced by a notice in the **Federal Register** stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) *Conduct of hearings.*—(1) *Admissibility of evidence.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file response to written motions will be at the discretion of the Administrative Law Judge.

Applicant responsibility. In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) *Open meetings and record.* All hearings and all hearing records shall be open to the public.

(g) *Requests for information, subpenas.* (i) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (ii) The Administrative Law Judge may exercise the authority of the Committee to issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(h) *Information Collection.* The information collection requirement contained in § 452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 452.06 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor's participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) *Separation of functions.* (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consulation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex parte communications.* The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation fo the report.

§ 452.08 Submission of Secretary's report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary's report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under § 452.03(a).

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.

453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional committee powers.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Final determinations.* Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote of not less than five of its members voting in person:

(1) It determines based on the report of the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive, that—

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibitied by section 7(d) of the Act; and,

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation within historical range, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned.

(b) *Decision and order.* The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the **Federal Register** as soon as practicable.

(c) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action (i) regardless of whether the species was identified in the biological assessment, and (ii) only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if (A) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and (B) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent. If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) *Finding by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the **Federal Register** inviting written submissions from interested persons. The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the **Federal Register** a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations or oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) All meetings and records of the Committee shall be open to the public.

(e) The Chairman shall publish a notice of all Committee meetings in the **Federal Register.** The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

Dated: July 20, 1983.

James G. Watt,

Chairman, Endangered Species Committee and Secretary of the Interior.

Malcolm Baldrige,

Secretary of Commerce.

[FR Doc. 83-30667 Filed 11-15-83; 8:45 am]

BILLING CODE 4310-10-M

Notices

Federal Register
Vol. 48, No. 222
Wednesday, November 16, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Deposting of Stockyard; Murfreesboro Livestock Center, Tennessee

It has been ascertained, and notice is hereby given, that the livestock market named herein, originally posted on the respective date specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under said Act and is, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
TN-146 Murfreesboro Livestock Center, Murfreesboro, Tenn.	May 9, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register**. This notice shall become effective upon publication in the **Federal Register**.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq*)

Done at Washington, D.C., this 10th day of November 1983.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 83-30901 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-02-M

Posted Stockyard; Southeastern Livestock Service and Auction, Inc., Alabama

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 35 *et seq.*), it was ascertained that the livestock market named below is a stockyard within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owner and to the public by posting notices at the stockyards as required by said section 302, on respective date specified below.

Facility No., name, and location of stockyard	Date of posting
AL-165 Southeastern Livestock Service and Auction, Inc., Phenix City, Ala.	Oct. 24, 1983.

Done at Washington, D.C. this 10th day of November, 1983.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 83-30902 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-02-M

Soil Conservation Service

Watershed Projects; Avalon-Alacran Watershed, New Mexico; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Avalon-Alacran Watershed project, Eddy County, New Mexico, effective on October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Avenue, SW, Room 3301, Albuquerque, New Mexico 87102, (505) 766-2173.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: November 4, 1983.

Ray T. Margo, Jr.,

State Conservationist.

[FR Doc. 83-30729 Filed 11-15-83; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: December 1 and 2, 1983.

Time: 9:00 a.m. each day.

Place: State Department Building, Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Charles M. Kupperman, Executive Director of the General Advisory Committee, Room 5927, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, telephone (202) 632-5176.

Purpose of advisory committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will include the following discussions and presentations:

December 1

A.M. and P.M.: Compliance

December 2

A.M.: Compliance

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated October 31, 1983, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

John E. Grassle,

Committee Management Officer.

[FR Doc. 83-30855 Filed 11-15-83; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Commission on Industrial Competitiveness; Meetings

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of Meetings.

SUMMARY: The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Times and Places

Committee on Research, Development and Manufacturing (a subcommittee of the Commission)
Monday, November 28, 1983
9:30 am–4:30 pm
The Governor's Suite
Floor #107
#1 World Trade Center
New York City, New York

Committee on International Trade (a subcommittee of the Commission)
Thursday, December 1, 1983
9:00 am–5:00 pm
U.S. Department of Commerce
Room 4830
14th and Constitution Ave., NW.
Washington, DC 20230

Public participation: The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: James L. Wolbarsht, Director of Operations, President's Commission on Industrial Competitiveness, 734 Jackson Place, NW., Washington, DC 20503, telephone: 202–395–4527 on substantive issues or Yvonne Barnes, Departmental Committee Management Analyst, 202–377–4217 on issues regarding administration of the Commission.

Dated: November 9, 1983.

James L. Wolbarsht,

Director of Operations, President's Commission on Industrial Competitiveness.

[FR Doc. 83-30693 Filed 11-9-83; 11:20 am]
BILLING CODE 3510-18-M

Foreign-Trade Zones Board

[Order No. 232]

Resolution and Order Approving the Application of the Greater Gulfport/Biloxi Foreign Trade Zone, Inc., for a Foreign-Trade Zone in Harrison County, Mississippi, Within the Gulfport Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Gulfport/Biloxi Foreign Trade Zone, Inc., a non-profit Mississippi development corporation, filed with the Foreign-Trade Zones Board (the Board) on March 15, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Harrison County, Mississippi, within the Gulfport Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc. (the Grantee), a Mississippi non-profit development corporation, has made application (filed March 15, 1983, Docket No. 6–83, 48 FR 11730) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone consisting of four sites in Harrison County, Mississippi, within the Gulfport Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 92 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations.

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United

States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 4th day of November 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte,

Executive Secretary.

[FR Doc. 83-30805 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 233]

Resolution and Order Approving the Application of the Triangle J Council of Governments for a Foreign-Trade Zone in Raleigh/Durham, North Carolina, Adjacent to the Durham Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Triangle J Council of Governments, a six-county intergovernmental association and a North Carolina public corporation, filed with the Foreign-Trade Zones Board (the Board) on April 29, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Durham and Granville Counties and in Raleigh, North Carolina, adjacent to the Durham Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Raleigh/Durham, North Carolina, Adjacent to the Durham Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Triange J Council of Governments (the Grantee), a North Carolina public corporation, has made application (filed April 29, 1983, Docket No. 12–83, 48 FR 20458) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Durham County, Granville County and Raleigh, North Carolina, adjacent to the Durham Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 93 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 4th day of November 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. DaPonte,

Executive Secretary.

[FR Doc. 83-30806 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 230]

Resolution and Order Approving the Application of the County of Onondaga, New York, for a Foreign-Trade Zone in the County of Onondaga, Adjacent to the Syracuse Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the County of Onondaga, New York, filed with the Foreign-Trade Zones Board (the Board) on March 7, 1983, requesting a grant of authority for establishing, operating, and maintaining

a general-purpose foreign-trade zone on the Town of Clay, Onondaga County, New York, adjacent to the Syracuse Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Onondaga County, New York, within the Syracuse Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

Whereas, the County of Onondaga, New York, (the Grantee) has made application (filed March 7, 1983, Docket No. 4–83, 48 F.R. 10725) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in the Town of Clay, Onondaga County, New York, adjacent to the Syracuse Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 90 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 4th day of November 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. DaPonte,

Executive Secretary.

[FR Doc. 83-30803 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 231]

Resolution and Order Approving the Application of the Orleans County Development Corporation for a Foreign-Trade Zone in Newport, Vermont, Adjacent to the Derby Line Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Orleans County Development Corporation, a Vermont non-profit development corporation, filed with the Foreign-Trade Zones Board (the Board) on March 7, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Newport, Vermont, adjacent to the Derby Line Customs port of entry, the Board, finding that the requirements of the Foreign Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Newport, Vermont, Adjacent to the Derby Line Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is

authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Orleans County Development Corportion (the Grantee), a Vermont non-profit development corporation, has made application (filed March 7, 1983, Docket No. 5–83, 48 FR 10728) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Newport, Vermont, adjacent to the Derby Line Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 91 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 4th day of November 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. DaPonte

Executive Secretary.

[FR Doc. 83-30804 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-010]

Antidumping Duty Order; Carbon Steel Wire Rod from Brazil

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order; Carbon Steel Wire Rod from Brazil.

SUMMARY: In separate investigations concerning carbon steel wire rod from Brazil, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that carbon steel wire rod from Brazil is being sold at less than fair value and that sales of carbon steel wire rod from Brazil are materially injuring a United States industry. Additionally, although the Department of Commerce found that "critical circumstances" did exist with respect to carbon steel wire rod from Brazil, the ITC found that "critical circumstances" did not exist. Therefore, based on these findings, all entries, or warehouse withdrawals, for consumption of carbon steel wire rod from Brazil made on or after May 4, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

Since the ITC made a negative finding regarding "critical circumstances" under 735(b)(4)(A) of the Tariff Act of 1930 as amended (the Act) (19 U.S.C. 1673d(b)(4)(A), the suspension of liquidation previously ordered 90 days retroactive from the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, is no longer in effect. Therefore, Customs officals will be directed to terminate any retroactive suspension of liquidation, release any bond or other security and refund any cash deposit, and liquidate all entries or warehouse withdrawals for consumption of carbon steel wire rod from Brazil made before May 4, 1983.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Consititution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–4929.

SUPPLEMENTARY INFORMATION: The merchandise covered by this order is carbon steel wire rod, a coiled, semi-finished, hot-rolled, carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States*.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 4, 1983, the Department published its preliminary determination that there was reason to believe or suspect that carbon steel wire rod from Brazil was being sold at less than fair value (48 FR 20106). On September 22, 1983, the Department published its final determination that these imports were being sold at less than fair value and that "critical circumstances" existed with respect to carbon steel wire rod from Brazil. (48 FR 43202).

On November 1, 1983, in accordance with section 735(b) of the Act (19 U.S.C. 1673(b)), the ITC notified the Department that such importations are materially injuring a United States Industry. The ITC made a negative determination regarding "critical circumstances."

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C.

1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of carbon steel wire rod from Brazil. This antidumping duty will be assessed on all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after May 4, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margins (percent)
COSIGUA	49.61
Belgo-Mineria	76.49
All other manufacturers/producers/exporters	63.51

This determination constitutes an antidumping order with respect to carbon steel wire rod from Brazil, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). The Department intends to conduct an administrative review within 12 months of publication of this order, as provided for in section 751 of the Act (19 U.S.C. 1675).

We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and §353.48 of the Department of Commerce Regulations (19 CFR 353.48).

Dated: November 8, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-30802 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DS-M

[A-274-001]

Antidumping Duty Order; Carbon Steel Wire Rod from Trinidad and Tobago

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Antidumping Duty Order.

SUMMARY: In separate investigations, the United States Department of Commerce and the United States International Trade Commission (ITC) have determined that carbon steel wire rod from Trinidad and Tobago is being sold at less than fair value and that sales of carbon steel wire rod from Trinidad and Tobago are materially injuring a United States industry. Therefore, all entries, or warehouse withdrawals, for consumption of carbon steel wire rod from Trinidad and Tobago made on or after May 4, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumpting duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Mary Jenkins, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4929 or 377-1756.

SUPPLEMENTARY INFORMATION: The merchandise covered by this order is carbon steel wire rod, a coiled, semi-finished, hot-rolled, carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States.*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 4, 1983, the Department published its preliminary determination that there was reason to believe or suspect that carbon steel wire rod from Trinidad and Tobago was being sold at less then fair value (48 FR 20109. On September 22, 1983, the Department published its final determination that these imports were being sold at less than fair value (48 FR 43206).

On November 1, 1983, in accordance with section 735(b) of the Act (19 U.S.C. 1673(b)), the ITC notified the Department that such importations are materally injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of carbon steel wire rod from Trinidad and Tobago. This antidumping duty will be assessed on all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after May 4, 1983, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 9.79 percent. This determination constitutes an antidumping duty order with respect to carbon steel wire rod from Trinidad and Tobago, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). The Department intends to conduct an administrative review within twelve months of publication of this order, as provided for in section 751 of the Act (19 U.S.C. 1675).

We have deleted from the Commerce Regulations, Annex 1 to 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 335.48) of the Department of Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-30801 Filed 11-16-83; 8:45 am]

BILLING CODE 3510-DS-M

[C-475-008]

Final Affirmative Countervailing Duty Determination; Forged Undercarriage Components from Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain benefits which constitute

subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Italy of semifinished forged undercarriage components described in the "Scope of Investigation" section of this notice. The net subsidy is 1.37 percent *ad valorem*. The U.S. International Trade Commission will determine whether imports are materially injuring or threatening to materially injure a U.S. industry, within 45 days after publication of this notice.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald or Deborah A. Semb, Office of Investigations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 377–3534.

SUPPLEMENTARY INFORMATION: Based upon our investigation, we have determined that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Italy of semifinished forged undercarriage components, as described in the "Scope of Investigation" section of this notice.

The following programs were found to confer subsidies:

- Rebates of indirect taxes.
- Pricing on forging quality steel.

We determine the net subsidy to be 1.37 percent *ad valorem*.

Case History

On April 29, 1983, we received a petition from counsel for Jernberg Forgings Co., Lindell Drop Forge Co., Portec, Inc., Presrite Corp., Presrite of Jefferson, Inc., Walco Metal Forming Group, and Walker Forge, Inc. filed on behalf of the U.S. industry producing forged undercarriage components. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to manufacturers, producers, or exporters in Italy of forged undercarriage components. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on May 24, 1983, we initiated an investigation (48 FR 23288). At that time, we stated that we expected to issue a preliminary determination by July 25, 1983. We subsequently determined that the case was "extraordinarily complicated" as defined in section 703(c)(1)(B) of the Act, and postponed our preliminary determination until August 25, 1983 (48 FR 28564).

Since Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the International Trade Commission (ITC) of our initiation. On June 13, 1983, the ITC determined that there is a reasonable indication that imports of semifinished forged undercarriage links and rollers are materially injuring or threatening to materially injure U.S. industries. The ITC also determined that there is no reasonable indication that semifinished forged undercarriage segments and finished forged undercarriage links, rollers and segments are materially injuring or threatening to materially injure U.S. industries. Since Industria Meccanica e Stampaggio S.p.A. (IMES) is the only known exporter to the U.S. of semifinished forged undercarriage links and rollers, our investigation of the petition's allegations regarding Italtractor ITM S.p.A. and Berco S.p.A., the manufacturers, producers and exporters of semifinished forged undercarriage segments and finished forged undercarriage links, rollers and segments, was terminated.

We presented a questionnaire concerning the allegations in the petition to the Embassy of Italy in Washington, D.C. on June 14, 1983, and requested a response by July 14, 1983. In a letter dated July 11, 1983, the government of Italy requested a postponement of the due date of the response; we granted the Italian government a two-week extension. The government of Italy submitted a response to our questionnaire on July 28, 1983. Additional information was submitted on numerous dates.

On August 24, 1983, we preliminarily determined that the government of Italy was providing manufacturers, producers, or exporters of semifinished forged undercarriage components with certain benefits which constitute subsidies within the meaning of the countervailing duty law (48 FR 38273). The estimated net subsidy was 1.02 percent *ad valorem* and the following programs were preliminarily determined to confer subsidies:

- Rebates of indirect taxes.
- Preferential financing.

On September 12–23, 1983, we verified in Italy the questionnaire responses submitted by the government of Italy and IMES.

Our notice of preliminary determination gave interested parties an opportunity to submit written and oral views. Following the preliminary determination, both petitioners' and respondent's counsels filed briefs pertaining to this investigation. We held a public hearing on September 27, 1983, at which counsel for the petitioners, counsel for IMES, and representatives from the Italian Embassy participated.

Scope of Investigation

The products covered by this investigation are semifinished forged undercarriage links and rollers for crawler-mounted machinery (forged undercarriage components). The merchandise is currently classified under item numbers 664.08, 692.34 and 692.35 of the Tariff Schedules of the United States Annotated (TSUSA).

Industria Meccanica e Stampaggio S.p.A. (IMES) of Sumirago (Varese), Italy is the only known exporter of the forged undercarriage components which were exported to the United States. The period for which we are measuring subsidization is January 1, 1982 through April 30, 1983.

Analysis of Programs

In its response, the government of Italy provided data for the applicable period. In addition, a response was provided by IMES through the government of Italy. Based upon our analyses of the petition, the responses to our questionnaries, our verification, and oral and written comments by interested parties, we determine the following:

I. Programs Determined To Confer Subsidies

We have determined that subsidies are being provided under the programs listed below to manufacturers, producers, or exporters in Italy of forged undercarriage components.

A. *Rebates of Indirect Taxes.* The stated purpose of Italian Law 639 is to rebate customs duties and certain indirect taxes upon the export of products containing certain raw materials. The law sets forth the value of the rebate for iron and steel in lire per kilogram. Rebate values have remained unchanged since enactment of the law in 1964. Granting of the rebate is automatic provided all the proper information is supplied to and verified by the government of Italy.

Respondents did not provide the Department with information on the criteria for establishing the rebate value and on the indirect taxes which were subject to rebate. No evidence was presented by the respondents to demonstrate the requisite linkage between the amount of the rebate and the incidence of customs duties and

certain indirect taxes on various inputs of forged undercarriage components.

Since the requisite linkage was not demonstrated and since this rebate is contingent upon export performance, we determined that the rebate of indirect taxes provided to IMES under Italian Law 639 conferes an export subsidy upon the manufacturers, producers, or exporters in Italy of forged undercarriage components.

We calculated the benefit received under this program by allocating the value of the rebates earned between January 1, 1982 and April 30, 1983 over the value of IMES' 1982 and January–April 1983 exports of forged undercarriage components. On this basis, we calculated a net subsidy in the amount of 1.37 percent *ad valorem.*

B. *Pricing on Forging Quality Steel.* The petitioners alleged that the government of Italy, through two government-owned steel mills, provides forging quality steel to IMES at prices which are preferential relative to other Italian purchasers. The government of Italy did not respond to the DOC questions on the prices of steel charged to IMES and to other Italian purchasers. In the absence of such a response, we assume that steel mills owned by the government of Italy may sell forging quality steel to IMES at rates lower than those charged to others.

Assuming that such price discrimination confers a subsidy, we find a countervailable subsidy amount of zero on the facts of this case. Because the government of Italy did not provide information on steel prices, we must use the "best information available" to determine the benefit conferred upon IMES by preferential pricing of steel by the government of Italy. Information on the prices of steel was provided by IMES and by the petitioner. The steel price information provided by the petitioner was for steel bar, a finished steel product. IMES provided information on its purchases of forging quality steel from two privately owned steel mills, two government-owned steel mills and a United Kingdom steel mill. We verified these costs and used the steel prices from the two privately owned mills provided by IMES as "best information available."

IMES purchased nearly twice as much steel from private suppliers in 1982 as is did from publicly owned suppliers. The weighted average price of steel purchased from private suppliers was lower than the weighted average price of steel purchased from publicly owned suppliers. Thus, the countervailable subsidy amount IMES received from preferential prices on steel purchased from government-owned steel suppliers was zero percent *ad valorem.*

II. Programs Determined Not To Confer Subsidies

We have determined that subsidies are not being provided to manufacturers, producers, or exporters in Italy of forged undercarriage components under the programs described below.

A. *Preferential Financing.* In the preliminary determination, we found that the financing provided to IMES under Italian Law 263 conferred a domestic subsidy because we believed that these loans were limited to companies located in the Mezzagiorno or in "designated depressed areas" and that the terms of these loans were inconsistent with commercial considerations. During verification, we found that this program was generally available to all small and medium-sized companies in Italy. Italian Law 623 has not been in force since 1976.

In October 1974, IMES obtained two eight-year loans from Mediocredito Regionale Lombardo at the prevailing commercial rate of interest. Mediocredito Regionale Lombardo is a regional medium-term credit institution founded and subject to government control under Law 445. Under Law 445, financing is available at commercial rates to small and medium-sized businesses for equipment or capital from regional medium-term credit institutions. Mediocredito Regionale Lombardo is owned by public and private shareholders with no direct ownership by the government of Italy.

In February 1976, IMES received a reduction in the rate of interest under Law 623 on one of the loans obtained from Mediocredito Regionale Lombardo. The other 1974 loan IMES obtained from Mediocredito Regionale Lombardo did not receive a reduction in the rate of interest. We verified that IMES is not located in the Mezzagiorno or in a "designated depressed area" and that IMES received the interest rate reduction which was available to all small and medium-sized businesses. Both loans were repaid in 1982.

Because the interest rate reduction received by IMES under Law 623 is not limited to a specific industry, group of industries, or to companies in specific regions, we have determined that the rate reduction IMES received under Law 623 does not confer a countervailable subsidy upon the manufacturers, producers, or exporters in Italy of forged undercarriage components.

B. *Convertible Debt.* IMES issued convertible debt in 1977. This debt was converted to capital stock in November, 1982. We verified that the conversion was consistent with commercial considerations. Therefore, we have determined that the conversion of IMES's debt to capital stock did not confer a countervailable benefit.

III. Programs Determined Not To Be Used

We have determined that the programs listed below which were listed in our notice of initiation are not being used by the manufacturers, producers, or exporters in Italy of forged undercarriage components.

A. *Government Equity Infusions Inconsistent With Commercial Consideration.* We verified that IMES is a 100 percent privately owned, family operated company which has not received any government equity infusions.

B. *Regional Development Incentives.* The petition alleges that IMES receives development benefits provided by the government of Italy under the following laws or programs: Law 908 which provides subsidized loans at below market rates and on preferential terms to qualifying industrial projects in northern and central Italy; Law 614 which provides tax incentives, including a ten-year total exemption from local taxes, to certain industrial enterprises establishing or expanding in areas of northern and central Italy; and Law 902 which assists small and medium-sized businesses in northern and central Italy with selective investments, particularly for modernizing existing plants to save labor costs.

We verified that IMES has neither received any benefits from, nor participated in, any of these regional development programs.

IV. Program No Longer Used

We have determined that program listed below which was included in our notice of initiation is no longer used by the manufacturers, producers, or exporters in Italy of forged undercarriage components.

A. *Export Credit Financing.* In the preliminary determination, we stated that we would seek more complete information on the terms and conditions of the export credit financing received by IMES' American customer under Italian Law 227.

Part IV of Italian Law 227 establishes medium-term credit financing to promote the exportation of gods and services. The Istituto Centrale per il Credito and Medio Termine (Mediocredito Centrale) administers the export credit financing through "special medium and long-term credit institutions." The Minister of the

Treasury, after consulting the Interministerial Committee for Credit and Savings, establishes the requirements, terms and conditions of the export credit financing. The financing is denominated in Italian lire or any foreign currency acceptable to the Mediocredito Centrale and the special medium and long-term credit institutions.

During the period under investigation, certain shipments of forged undercarriage components were financed through a program of export credits administered by and officially supported by the government of Italy. Under this program, an export facility was made available in 1981 between one of the "special medium and long-term credit institutions" and a French commercial bank. This facility provided an "umbrella" line of credit to the French bank at a rate consistent with the terms of the OECD arrangement on export credits. The French bank could then re-lend the funds provided under the umbrella at a rate above the OECD rate. These loans by the French bank were buyers' credits tied to exports from Italy, and were subject to approval by the Italian authorities. This particular umbrella facility expired in April 1983, after which time the French bank could not make new loans under the facility.

In October, 1982, the U.S. customer entered into an agreement with the French bank, opening a line of credit for the purchase of forged undercarriage components from IMES. Shipments financed under this line of credit are identifiable by invoice, and all invoices against which this line was used were issued by IMES from October 7 to November 9, 1982. All shipments financed under this program were entered for consumption before the suspension of liquidation. After that time, but prior to the initiation of this investigation, the U.S. customer informed the French bank that there would be no further purchases using this line of credit and, therefore, the French bank was released from its commitment for the remainder of the line. Accordingly, the French bank terminated the agreement with respect to the unused portion of the line of credit, and no further purchases by the U.S. customer from IMES were financed through this program.

Because this line of credit is no longer available to support sales by IMES to the U.S. customer and no shipments of the forged undercarriage components subject to the suspension of liquidation were financed under this program, we conclude that loans under this program are no longer available in support of IMES and that subsidies, if any, which may have been conferred on prior entries are beyond the reach of this proceeding. However, because of the possibility that a new facility may be opened, and official lending in support of exports by IMES could be resumed, we intend to reexamine these oficial export credits in the course of the annual review conducted pursuant to section 751 of the Act should a countervailing duty order be issued in this proceeding.

Petitioner's Comments

Comment 1

In calculating the amount of the benefit conferred by the rebate of indirect taxes, Commerce should use either the statutory lire per kilogram value of the rebate as it has done in the past or, in the alternative, the amount of such rebate earned by IMES during the review period.

DOC Position

We verified that although the statutory lire per kilogram rebate value was 30 lire per kilogram, the rebate value fluctuated based upon yearly appropriations for the program by the Italian Goverment. Therefore, we calculated the amount of benefit conferred upon IMES by Law 639 on an *ad valorem* basis.

We agree that the calculations to determine the benefits conferred on IMES by Law 639 should be based on the amount of such rebate earned by IMES during the review period. Accordingly, we recalculated the benefit conferred by the rebate of indirect taxes on the basis of the amount of the rebate earned by IMES during the review period.

Comment 2

Commerce must determine whether IMES benefits from preferential prices and terms from its steel suppliers vis-a-vis their other customers.

DOC Position

We requested information from the government of Italy on its steel prices to customers other than IMES. This information was not provided; therefore, we determined that the government of Italy provided steel to IMES at preferential prices relative to their other customers. *See* the section of this notice titled "Programs Determined to Confer Subsidies".

Comment 3

In its preliminary determination, Commerce did not address the petitioners' central allegation of preferential steel pricing. Commerce mistakenly applied its upstream subsidization methodology.

DOC Position

Since the Government of Italy (GOI) did not respond to our questions on the prices of steel charged to IMES and to other Italian purchasers, we must assume that the government is selling to IMES at preferential rates. However, as described in section I.B, using "best information available" (information provided by IMES), we determined that there was no countervailable subsidy amount.

Comment 4

At the inducement of the GOI, privately owned steel mills also sell to IMES at preferential prices. This inducement is as much a subsidy as implementing the policy through government-owned steel mills.

The Act equally enjoins IMES's privately owned steel suppliers, as well as government owned steel suppliers, from subsidizing IMES's manufacture and exportation of forged undercarriage components.

DOC Position

We found no evidence of preferential pricing.

Comment 5

Because the GOI refused to supply data requested in the questionnaire, Commerce must use the European community official prices (Davignon prices) or the information on steel prices provided by the petitioners as "best information otherwise available".

DOC Position

Italian steel is generally sold at discounts from the Davignon prices.

The information on steel prices provided by the petitioners is for hot-rolled steel bar, a finished steel product. We verified that the steel product that IMES uses to manufacture forged undercarriage components is steel billet, a semifinished steel product. We also verified the prices that IMES paid for steel billet. Because hot-rolled steel bar and steel billet are two distinct steel products, the finished product generally costlier than the semifinished product, we used the "best information available in making our final determination, pursuant to section 776(a) of the Act. The best information available is the verified information furnished by IMES rather than the information provided by the petitioners.

Comment 6

Failure by Commerce to countervail preferential steel prices and terms received by IMES would lead to wholesale circumvention of the U.S.-E.C. steel agreement. Italian steel mills can easily circumvent the Agreement by selling steel at preferential prices and terms to IMES (and other steel fabricators) who would then forge the steel into products for subsequent sale in the U.S. at low prices. The Italian steel industry, therefore, would be exporting, through IMES, its overcapacity and high unemployment to the United States.

DOC Position

As noted in our response to petitioner's comment 5 above, we verified that the steel that IMES uses to manufacture forged undercarriage components is steel billet, a semifinished steel product. Steel billet is not a licensed product under the United States-European Community steel arrangement. Sales in the U.S. of forged undercarriage components manufactured from a steel product not licensed under by the U.S.-E.C. steel agreement would not circumvent that Arrangement.

Comment 7

Commerce should find that the preferential export credit financing provided to IMES's American customer confers a countervailable benefit. If the exportation of products benefits from preferential financing, then the products are being subsidized. It is irrelevant whether the product is being subsidized directly or indirectly.

DOC Position

We determined that the export credit financing provided to IMES American customer is no longer being used. *See* the section of this notice titled "Program No Longer Used."

Comment 8

The countervailing duty law does not exempt from its provisions preferential export credit financing that complies with the requirements of the OECD Arrangement.

DOC Position

See DOC position on Petitioners' Comment 7 above. We did not reach this issue because we found that the financing concerned is no longer being used.

Comment 9

Commerce should calculate the *ad valorem* amount of the subsidy conferred by IMES's preferential export credit financing by using as its commercial benchmark a comparable dollar-denominated loan that IMES could have secured in the Italian commercial market, without regard to the credit experience of IMES's American customer or the availability of dollar financing outside of Italy.

DOC Position

See the section of this notice titled "Program No Longer Used."

Respondent's Comments

Comment 1

The rebates of indirect taxes that IMES receives under Law 639 should not be found countervailable.

DOC Position

We have determined that the rebates of indirect taxes IMES receives under Law 639 are an export subsidy conferred upon IMES by the government of Italy. *See* the section of this notice "Programs Determined to Confer Subsidies" for an explanation of the DOC position.

Comment 2

If the DOC continues to treat the Law 639 program as countervailable in the final determination, the DOC should continue to use the amount of rebate actually received to calculate the benefit to IMES. The amount received during the period of investigation, rather than the amount theoretically earned, more accurately reflects the real value of the program to IMES. Further, any benefit calculation should be on an *ad valorem* basis.

DOC Comment

We calculated the *ad valorem* subsidy conferred upon IMES by Law 639 using the amount of rebate earned by IMES during the period of investigation, rather than the amount received by IMES. We verified that the earned, but unreceived, rebates are reported on IMES financial statements as assets, enabling IMES to use the rebates as collateral for borrowing purposes. Thus, IMES is able to use or draw against earned but unreceived rebates. In addition, the delay in receipt of the rebate is due to administrative delay rather than government mandate.

Comment 3

IMES received no countervailable benefits from its steel purchases. IMES has never received any discounts contingent on export performance from any steel mill, whether government or private, domestic or foreign.

DOC Position

We found no evidence that IMES received any discounts based upon export performance. IMES does have some domestic sales and we verified that the steel prices charged IMES do not vary depending on the final destination of the products. *See* DOC response to Petitioners' Comment 2 above.

Comment 4

"Petitioners' allegation with regard to preferential steel prices was limited only to government-owned steel mills in their petition. On the last day of verification, they attempted to insert a new and unsubstantiated 'private subsidy' theory into this case. . . . There is absolutely no evidence in the record to indicate that the pricing practices of the private mills are dictated or controlled by the government. Under the countervailing duty statutes and ITA precedent, so-called 'private subsidies' are not countervailable unless required by a government. Therefore, petitioners' untimely and unsubstantiated allegation must be rejected."

DOC Position

The petitioners first raised their allegation of private subsidization in a letter prior to verification. We do not consider the allegation to have been "untimely."

Comment 5

The alleged "circumvention" of the U.S.-E.C. steel agreement by exportation to the U.S. of forged undercarriage components manufactured by IMES is a non-issue. The U.S.-E.C. Arrangement covered Italian hot-rolled sheet and strip and cold-rolled sheet and strip; the type of steel used by IMES to make forged undercarriage components (steel billet) is not covered by the Arrangement. Since the type of steel used by IMES was not at issue in the Italian steel cases, it is difficult to see why Italian steel producers would be "motivated" to circumvent the agreement that settled those cases.

DOC Position

We verified that the type of steel IMES uses to manufacture forged undercarriage components is steel billet which is not a product licensed under the U.S.-E.C. steel arrangement. Therefore, this investigation does not involve the circumvention of the U.S.-E.C. steel arrangement.

Comment 6

The pricing practices of the private steel mills would not be countervailable

even if preferential prices were provided. Any private domestic subsidy or export subsidy must be required by a government to be countervailable. There is no evidence in the record to indicate that the prices charged by the private steel companies are required, controlled, directed or influenced by the Italian government.

DOC Position

We found no evidence in the record or during verification, to indicate that the prices charged by the private steel companies are required, controlled, directed or influenced by the government of Italy.

Comment 7

IMES vigorously disputes the preliminary determination that the interest rate reduction it received under Law 623 is countervailable. The Law 623 interest rate reduction was generally available and, therefore, is not countervailable.

DOC Position

We verified that the interest rate reduction IMES received under Law 623 was generally available to all small and medium-sized companies. Accordingly, we determined that Law 623 did not confer a countervailable benefit on IMES.

Comment 8

The export credit financing recieved by IMES' American customer under Italian Law 227 is not countervailable because IMES was not the recipient of the loan. The financing arrangement benefitted the American customer, not IMES.

DOC Position

We did not reach this issue since we found that the financing concerned is no longer being used. *See* the section of the notice titled "Program No Longer Used."

Comment 9

Financing arrangements permitted by the OECD Arrangement are not countervailable. The U.S. participates in both the OECD Arrangement and GATT, which provide for the granting of export financing by its participants subject to certain restraints. The financing arrangement at issue in the present case was in conformity with the provisions of the OECD Arrangement, which thus brings the export credit practice outside the statutory definition of subsidy.

DOC Position

See our position on Comment 8 above.

Comment 10

If the DOC finds the export credit financing provided to IMES' American customer to be countervailable in spite of its accordance with the OECD Arrangement, the applicable benchmark should not be IMES' borrowing rate. The loan was granted to IMES' American customer, not IMES. Therefore, the more appropriate benchmark would be the U.S. prime rate or the London Interbank Offered Rate (LIBOR).

DOC Position

See our position on Comment 8 above.

Final Determination

Based on our investigation and in accordance with section 705(a)(1) of the Act, we reached a final determination that manufacturers, producers, or exporters in Italy of semifinished forged undercarriage components are being provided certain benefits which constitute subsidies within the meaning of the countervailing duty law.

Continuation of Suspension of Liquidation

We are directing U.S. Customs to continue to suspend liquidation of all entries of semifinished forged undercarriage components from Italy subject to this investigation which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit, the posting of a bond or other security equal to 1.37 *ad valorem* for each entry of the subject merchandise. The bond or cash deposit requirements established in our preliminary determinations of August 30, 1983, are no longer in effect.

ITC Notification

In accordance with section 705(c)(1)(A) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officials to assess a countervailing duty on semifinished forged undercarriage components from Italy entered, or withdrawn from warehouse, for consumption after the suspension of liquidation equal to 1.37 percent *ad valorem*. This determination is published pursuant to section 705(d) of the Act.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

November 7, 1983.

[FR Doc. 83-30878 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Patents by Agency

Department of Agriculture

SN 6-524,179
A Simple and Rapid Method for Extraction of Proteins From Bacteria

Department of Commerce

SN 6-525,771
Optical Fiber Thermometer

Department of Health and Human Services

SN 6-202,727 (4,397,552)
Instrument for Measurement of Exposure From a Laser Radiation
SN 6-254,097 (4,408,124)
BRH Test Pattern for Gamma Camera Performance (An Evaluator)
SN 6-319,995 (4,395,395)
Detection of Non-A, Non-B Hepatitis Associated Antigen
SN 6-528,258

Inactivation of Viruses Containing Essential Lipids

Department of the Air Force

SN 6–189,237 (4,397,147)
Power Circuit Utilizing Self Excited Hall Effect Switch Means
SN 6–210,476 (4,398,085)
Universal Timing Array
SN 6–231,088 (4,398,792)
Holographic Coupler for Fiber Optic Systems
SN 6–235,448 (4,398,430)
Rudder Pedal Grip Assembly
SN 6–242,502 (4,399,484)
Integral Electric Module and Assembly Jet Cooling System
SN 6–242,817 (4,398,685)
Aerial Day/Night Refueling Stations
SN 6–251,823 (4,397,554)
Transparency Halation Measurement Method and Apparatus
SN 6–253,453 (4,398,161)
Phas-Shifting Amplifier
SN 6–297,459 (4,399,733)
Semiautomatic Swaybrace
SN 6–305,667 (4,400,669)
Magnetostatic Wave Delay Line Having Improved Group Delay Linearity
SN 6–308,974 (4,396,201)
Missile Mounted Seal
SN 6–324,899 (4,396,171)
Aircraft Ejection Seat Catapult Device
SN 6–329,443 (4,398,415)
Swing Link Flexible Wind Tunnel Nozzle
SN 6–333,216 (4,399,005)
Method of Nickel Electrode Production
SN 6–342,995 (4,397,434)
Survivable Satellite Bus Structural
SN 6–361,020
Dewar Cooling Chamber for Semiconductor Platelets
SN 6–366,733 (4,400,540)
Oxy and Thioraryl-Phenylated Aromatic Biscyclopentadienones
SN 6–399,568 (4,400,411)
Technique of Silicon Epitaxial Refill
SN 6–401,164
Radar System for Reducing Angle Tracking Errors
SN 6–418,886 (4,396,459)
Method and Solution for Etching Indium Antimonide
SN 6–436,869 (4,400,221)
Fabrication of Gallium Arsenide-Germanium Heteroface Junction Device
SN 6–448,161 (4,400,421)
Four-Directional Structure for Reinforcement
SN 6–497,443
Distortion Free Fiber Optic System
SN 6–512,848
Programmable LFM Signal Processor
SN 6–518,275
Robotic Order Picking
SN 6–518,590
Method of Producing a Buried Long Period Grating
SN 6–520,386
Testing Apparatus for Airborne Missile System
SN 6–521,778
Flouride Glass Compositions
SN 6–521,803
Random Timer
SN 6–523,550
Process for the Deposition of III–V Compounds Using Ultra-Violet Radiation
SN 6–73,478 (4,398,686)
Towplate System

Department of the Army

SN 6–311,370 (4,401,670)
Method for Treating Gonorrhea Infections with 2-Acetyl- and 2-Propionylpyridine Thiosemicarbazones
SN 6–529,427
X–200 Electrically Conductive Adhesive
SN 6–533,089
A Linear Array Antenna Employing the Summation of Subarrays

Department of the Interior

SN 6–258,076 (4,407,775)
Pressureless Consolidation of Metallic Powders
SN 6–397,735 (4,409,189)
Recovery of Tungsten from Brines
SN 6–460,102 (4,409,020)
Recovery of Metals From Grinding Sludges

[FR Doc. 83–30839 Filed 11–15–83; 8:45 am]
BILLING CODE 3510–04–M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on December 6, 1983, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. (Public entrance to the building is on 14th Street, between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Principles that shoud be Embodied in the Constitution and Convention of the International Telecommunication Union (ITU)
(2) High-Definition Television
(3) Coordination Between Government and Industry Relative to Incidental and Restricted Radiation Devices

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before December 2, 1983. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 10 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 4701, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230, telephone 202–377–0805.

Dated: November 9, 1983.

Charles L. Hutchison,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 83–30791 Filed 11–15–83; 8:45 am]
BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Man-Made Fiber Textile Products From the People's Republic of China

November 10, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA) under the authority contained in E.O 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 16, 1983. For further information contact Diana Bass, International Trade Specialist, (202/377–4212).

Background

A CITA directive establishing import limits for specified categories of cotton, wool, and man-made fiber textile products, including Category 634, produced or manufactured in the People's Republic of China, and exported during the twelve-month period which began on January 1, 1983, was published in the **Federal Register** on August 19, 1983 (48 FR 37686). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of carryforward in the amount of 26,565 dozen to be applied to the current-year limit for this category. The amount of carryforward used this year will be deducted from the limit established for Category 634 in 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 10, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive furtrher amends, but does not cancel, the directive of August 19, 1983 from the Chairman of the Committee for the Implemenation of Textile Agreements which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1983.

Effective on November 16, 1983, the directive of August 19, 1983 is hereby further amended to adjust the previously established levels of restraint for Category 634 to 425,037 dozen [1] under the the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983.[2]

[1] The level has not been adjusted to account for any imports exported after December 31, 1982.

[2] The Agreement provides, in part, that: (a) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implemenation of Textile Agreements.

[FR Doc. 83-30884 Filed 11-15-83; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1984 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: November 15, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT:
C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 2, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (48 FR 39975) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractor for the service listed.

c. The action will result in authorizing small entities to provide a service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1984:

SIC 0782

Grounds Maintenance, U.S. Naval Security Activity, Skaggs Island, Sonoma, California

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 83-30852 Filed 11-15-83; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare Draft Environmental Impact Statement and Implementation of the Scoping Process for the Development of a Prototype Guayule Rubber Production and Processing Operation; Phoenix, Arizona

Correction

In FR Doc. 83-30297 appearing on page 51506 in the issue of Wednesday, November 9, 1983, make the following correction:

In the middle column, of the page, twenty-four lines from the top, "no later than November 9, 1983" should have read "no later than December 9, 1983".

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting.

AGENCY: National Advisory Board on International Programs.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: November 30 and December 1, 1983.

ADDRESS: FOB-6, The Barnard Auditorium, Horace Mann Learning Center, Room 1131.

FOR FURTHER INFORMATION CONTACT:
Kenneth D. Whitehead or Marguerite A. Follett, International Educational Programs Office, ROB-3, Room 3916, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202) 245-9691.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under Section 621 of the Higher Education Act of 1965 as amended by the Education Amendments

of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

This meeting of the National Advisory Board on International Education Programs is open to the public. The proposed agenda includes the formal swearing in of newly appointed Board members, an update of the reorganization of the Offfice of Postsecondary Education as it relates to the Office of International Education Programs, and a discussion of the recommendations to be presented by the Subcommitttee on Critical Needs in International Education to the whole Board. Following the discussion, the Board will make its recommendations for presentation to the Secretary. The meeting will be held from 7:30 p.m. to 9:30 p.m. on the 30th of November and will continue from 9:00 A.M to 4:30 P.M. on the First of December.

Records are kept of the Board's proceedings and are available for public inspection at the office of the National Advisory Board on International Education Programs from 8:00 A.M. to 4:30 P.M., ROB–3, Seventh & D Street, S.W., Room 3916, Washington, D.C.

Signed at Washington, D.C. on November 9, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83–30800 Filed 11–15–83; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (Euratom) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract S–EU–789, to Urangesellschaft, Gmbh, Frankfurt, the Federal Republic of Germany, 21.2 grams of natural uranium, for use as a standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 4, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83–30699 Filed 11–15–83; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/EU(SD)–49, from the Swiss Institute for reactor research to Karlsruhe, the Federal Republic of Germany, irradiated samples containing 1.82 grams of plutonium of United States origin, and 10.17 grams of uranium not of United States origin, for post-irradiation analysis. The residues are to be subsequently returned to Switzerland.

In accorance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 4, 1983.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83–30698 Filed 11–15–83; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP84–27–000]

K N Energy, Inc.; Request Under Blanket Authorization

November 10, 1983.

Take notice that on October 21, 1983, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84–27–000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act (18 CFR 157.205(b)) that K N proposes to add a new delivery point to Peoples Natural Gas Company, a Division of InterNorth, Inc. (Peoples), to reassign contract demand volumes of natural gas between the proposed delivery point and an existing delivery point and to construct and operate appurtenant facilities under authorization issued in Docket Nos. CP83–140–000 and CP83–140–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes the addition of a delivery point near Garden City, Kansas, and a reassignment of the authorized contract demand volumes of natural gas between the proposed Garden City delivery point and the existing delivery point in Goodland, Kansas. It is stated that the 8,000 Mcf of contract demand gas presently provided at the Goodland delivery point would be available to both the Goodland and Garden City points. K N further states that there would be no change in the total contract demand for gas delivered to Peoples as a result of the gas volume reassignment.

It is explained that the new delivery point, adjacent to K N's Holcomb compressor station, would enable Peoples to make a retail sale of natural gas for a two-year period from that point and that the delivery point would only be used for a two-year period from the date of initial delivery. It is further stated that Peoples would reimburse K N for the cost of constructing the new delivery point and that K N would remove the facilities as necessary at the end of the two-year period.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the

time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-30879 Filed 11-15-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-524-000 and CP83-524-001]

Northern Natural Gas Co.; Request Under Blanket Authorization

November 10, 1983.

Take notice that on September 27, 1983, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP83-524-000 a request, as amended November 2, 1983, in Docket No. CP83-524-001, pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate five small volume sales measuring stations, to construct and operate two town border stations, and to modify one existing delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate in Iowa, Minnesota and Kansas five small volume sales measuring stations for Peoples in order to provide natural gas service to five end-user customers for domestic and small volume agricultural needs, to construct and operate two town board stations for Peoples in order to provide natural gas service to the town of Geneva, Minnesota, and to the Blackbird Bend Grain Corporation near Whiting, Iowa, and to enhance the measurement capability of the Waterloo, Nebraska, town border station #1 in order to expand grain drying operations of Rob Seco. Such town border station is utilized to measure gas sold to Peoples, it is stated.

Northern also proposes to reduce the firm entitlements to Peoples for service to the community of Rochester, Minnesota, by 167 Mcf per day and design such entitlement for service to the town of Geneva, Minnesota.

Northern states that the additional gas volumes of 3,875 Mcf on a peak day and 172,106 Mcf on an annual basis, which would be delivered through the proposed facilities, would be within the present entitlements of Peoples. Norhern further states that such gas would be used for residential, commercial and essential agricultural customers.

Northern submits that the total estimated cost of the proposed facilities is $103,655 and that such cost would be financed from internally generated funds and partially, if required, from a reimbursement by Peoples as provided for in Northern's FERC Gas Tariff and the respective letter agreements between Northern and Peoples contained in the request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-30880 Filed 11-15-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-33-000]

Peoples Natural Gas Co.; Application

November 10, 1983.

Take notice that on October 24, 1983, The Peoples Natural Gas Company (Applicant), Two Gateway Center, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP84-33-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport, sell, and assign natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations under the Natural Gas Policy Act of 1978 as well as § 284.203 thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it received 53,431,495 dt equivalent of natural gas within or at the boundaries of Pennsylvania during the 12-month period ending August 31, 1983. It is asserted that during the same period Applicant received 82,994,363 dt equivalent of natural gas from all sources. It is also submitted that all of Applicant's existing operations are conducted in Pennsylvania and that Applicant currently holds an exemption pursuant to Section 1(c) of the Natural Gas Act.

Applicant asserts that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Applicant proposes a transportation rate of 39.90 cents per dt equivalent of gas and sets forth the rate methodology used in computing such rate in compliance with § 284.222(e)(2)(ii) of the Commission's Regulations. Applicant asserts the proposed rate is fair and equitable and requests the Commission to declare that by using this methodology to compute the transportation component in all transactions authorized under the blanket certificate Applicant can avoid seeking rate approval for each individual transaction.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirement of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-30881 Filed 11-15-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-28-000]

Tennessee Gas Pipeline Co.; Application

November 10, 1983.

Take notice that on October 21, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-28-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is one file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Transco from a point of receipt at an interconnection between the facilities of Applicant and Transco in Eugene Island Block 320, offshore Louisiana, for delivery to Transco at an interconnection between the facilities of Applicant and Transco at Kinder, Allen Parish, Louisiana or at Crowley, Acadia Parish, Louisiana. Applicant states that the volumes to be transported would be up to 2,000 Mcf of gas per day and would be on a best-efforts basis. It is asserted that such service is pursuant to a gas transportation agreement dated April 8, 1982.

The proposed service, it is said, would provide Transco with a means of transporting an additional supply of natural gas without its having to construct and operate duplicative facilities.

Applicant states that Transco would pay a volume charge equal to the product of 17.93 cents multiplied by the total volume of gas delivered during the month. It is further stated that the agreement contains a provision for a minimum monthly bill.

Applicant states further that it would retain, for fuel and use requirements, 2.56 percent of the volume received for delivery to Crowley and 3.02 percent of the volume received for delivery to Kinder.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-30882 Filed 11-15-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-13-000]

Valero Interstate Transmission Co. and Valero Transmission Co.; Application

November 10, 1983.

Take notice that on October 11, 1983, Valero Interstate Transmission Company (Vitco) and Valero Transmission Company (VTC), P.O. Box 500, San Antonio, Texas 78292, filed in Docket No. CP84-13-000 a joint application pursuant to §§ 284.107 and 284.127 of the Commission's Regulations and Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) for authorization to transport natural gas on behalf of one another, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Vitco proposes to transport, on behalf of VTC, volumes of natural gas that Reata Industrial Gas Company (Reata) proposes to purchase from Robert S. Spiller, *et al.* (Spiller) from acreage in Starr County, Texas. It is stated that Reata, a subsidiary of Valero Natural Gas Company, is engaged in the business of purchasing natural gas in the State of Texas and reselling it to industrial end users in VTC's market area.

Applicants state that the acreage committed to the Spiller-Reata Agreement is adjacent to Vitco's 16-inch Zapatha-to-Penitas pipeline in Starr County, Texas. It is indicated that Vitco would receive the gas, for the account of Reata, at the interconnection of Vitco's pipeline and the facilities of Spiller in Starr County and would redeliver the gas to VTC at the inlet of the Freer processing plant in Webb County, Texas. It is stated that VTC would then transport the gas, on behalf of Vitco, through VTC's system to industrial end users in VTC's market area that purchase gas from Reata.

Applicants assert that they propose to commence the transportation upon Commission approval of the instant application, and that the service is proposed to terminate upon the termination of the gas purchase agreement between Spiller and Reata. It is stated that the term of the Spiller-Reata Agreement is two years from the date of initial deliveries and month to month thereafter until terminated by either party.

It is indicated that Vitco would transport Reata's gas under the terms of an existing exchange agreement between Vitco and VTC. It is stated that the exchange is currently authorized under Section 311(a) of the NGPA and Subparts B and C of Part 284 of the Regulations in Docket Nos. ST82-123-000 and ST82-153-000. It is submitted that Vitco would not charge VTC a transportation rate for delivery of the volumes under the exchange, but instead would receive from VTC the transportation of equivalent volumes of Vitco's gas without charge under the exchange agreement.

VTC would charge Keata a transportation rate of 20.0 cents per Mcf, a rate based on the formula authorized in Docket No. SA80–81 (11 FERC ¶ 62,254), it is asserted.

Applicants state that the total and maximum daily quantities to be transported cannot be accurately estimated at this time; however, deliveries are expected initially to average less than one billion Btu per day. It is further stated that the transportation service is conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to Vitco's existing customers who are dependent on Vitco's general system supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83–30883 Filed 11–15–83; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Order Approving Submission of Proposed Transmission Rates to the FERC for Confirmation and Approval on a Final Basis

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of transmission rate order.

SUMMARY: The Assistant Secretary for Conservation and Renewable Energy, under Delegation Order No. 0204–33, as amended March 19, 1981, has developed, acting by and through the Administrator, Southwestern Power Administration (SWPA), increased transmission rates for SWPA and has approved these rates for submission to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis.

EFFECTIVE DATES: Proposed Rate Schedule TDC–82 is recommended to be effective upon confirmation and approval by the FERC through September 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Walter M. Bowers, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529

Fred A. Sheap, Office of Power Marketing Coordination, Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW, Room 6B–104, Washington, D.C. 20585, (202) 252–1040.

SUPPLEMENTARY INFORMATION: Proposed Rate Schedule TDC–82 for transmission and/or displacement of non-Federal power and energy over the system of the Southwestern Power Administration would supersede Rate Schedule TDC–2. Rate Schedule TDC–2 was approved on a final basis July 31, 1981, by the FERC for the period January 1, 1981, through September 30, 1983. On August 31, 1983, the Assistant Secretary for Conservation and Renewable Energy extended confirmation and approval of Rate Schedule TDC–2 on an interim basis through March 31, 1984, to allow the FERC time to act on proposed Rate Schedule TDC–82.

Issued in Washington, D.C., this 4th day of November, 1983.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

United States of America Department of Energy; Assistant Secretary for Conservation & Renewable Energy

In the matter of Southwestern Power Administration—Rate Schedule TDC–82; Rate Order, No. SWPA–12.

Order Approving Submission of transmission Rates

Dated: November 4, 1983.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (SWPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978) the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, to confirm and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. This rate order is issued pursuant to the delegation to the Assistant Secretary for Conservation and Renewable Energy.

Background

Existing Rates

On January 23, 1973, the Assistant Secretary for Water and Power Resources, U.S. Department of the Interior, approved SWPA's Schedule TDC applicable to transmission and/or displacement of non-Federal power and energy over the SWPA transmission system for a period ending January 23, 1976. No regulatory authority approval was required by statute.

On June 29, 1973, by the approval of the Assistant Secretary, Energy and Minerals, U.S. Department of the Interior, Schedule TDC was amended to provide that surplus capacity in SWPA transmission facilities could be made available to other than SWPA customers. No regulatory authority approval was required and the Assistant Secretary's approval was extended until June 30, 1976. Schedule TDC (Amended) was revised and later approved by the Assistant Secretary, Energy and Minerals, U.S. Department of the Interior, on August 2, 1976, for a period ending June 30, 1979. Schedule TDC (Revised) maintained the same pricing as the original Schedule TDC with provisions to correct certain inequities in the adjustment for power factor.

On June 18, 1979, the Assistant Secretary for Resource Applications, U.S. Department of Energy approved an extension of Schedule TDC (Revised), on an iterim basis, effective July 1, 1979, for a period ending June 30, 1980, and submitted the extension to the FERC for final confirmation and approval.

On July 1, 1980, the Assistant Secretary for Resource Applications, U.S. Department of Energy, extended confirmation and approval of Schedule TDC (Revised) on an iterim basis through December 31, 1980. This extension was necessary to allow SWPA time to complete a detailed study of the rates and to provide the public the opportunity to comment on any proposed revision. The study was completed and the resultant Rate Schedule TDC–2 was approved on an interim basis December 11, 1980, by the Assistant Secretary for resource Applications. On July 31, 1981, the FERC approved Rate Schedule TDC–2 on a final basis through September 30, 1983. On August 31, 1983, the Assistant Secretary for Conservation and Renewable Energy extended confirmation and approval of Rate Schedule TDC–2 on an interim basis through March 31, 1984.

In June 1983, SWPA completed a Transmission Rate Study which resulted in proposed Rate Schedule TDC–82. The existing Rate Schedule TDC–2 and the proposed Rate Schedule TDC–82 are shown below:

	Existing TDC-2	Proposed TDC-82
1. Transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at 138 kV or 161 kV ($/kW/mo)	0.25	0.30
2. Transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at 69 kV ($/kW/mo)	0.40	0.50
3. Transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at voltages of less than 69 kV ($/kW/mo)	0.55	0.70
4. 5% of (1), (2), or (3) amounts above per kilowatt per day for the interruptible Transmission Demand at a given delivery voltage as applicable		
5. Transmission and/or displacement of non-federal energy not associated with non-federal power to point or points of delivery from the System of SWPA (mills/kWH)	0.8	1.0

Public Notice and Comment

Opportunity for public review and comment on Proposed Rate Schedule TDC–82 was announced by notice published in the **Federal Register** July 11, 1983. On July 15, 1983, copies of the Federal Register Notice and Copies of the 1983 Transmission Rate Study, including Rate Schedule TDC–82, were mailed to customers directly affected by the proposed rate increase. On that date, copies of the Federal Register Notice and Rate Schedule TDC–82 were mailed to the other integrated system customers. Subsequently, copies of the rate schedule and rate study were furnished to interested parties upon request. The public participation process produced no comments from customers or interested parties regarding proposed Rate Schecule TDC–82.

Discussion

The following twelve customers are presently being billed for transmission service under Rate Schedule TDC–2: Arkansas Power and Light (AP&L); Public Service Company of Oklahoma; Associated Electric Cooperative; Western Farmers Electric Cooperative; Carthage, Missouri; Kennett, Missouri; New Madrid, Missouri; Arkansas Electric Cooperative; Paragould, Arkansas; Piggott, Arkansas; Poplar Bluff, Missouri; and Grand River Dam Authority.

The 1983 Transmission Rate Study indicates that present revenues from Rate Schedule TDC–2 are not adequate to recover the costs of providing transmission service for wheeling non-federal power and energy. The study indicates that Rate Schedule TDC–82 will produce the revenues needed to cover all related costs. Revenue under this rate schedule is estimated to be about 1% of the total expected integrated system gross revenue.

The Administrator prefers that Rate Schedule TDC–82 not be placed into effect on an interim basis. Therefore, SWPA proposes that Rate Schedule TDC–82 be effective on a final basis upon confirmation and approval by the FERC through September 30, 1988.

Availability of Information

Information regarding this rate adjustment including studies, comments, and other supporting material are available for public review in the offices of the Southwestern Power Administration, 333 W. 4th, Tulsa, Oklahoma, 74101, and in the Office of the Director of Power Marketing Coordination, 1000 Independence Avenue, S.W., Room 6B–104, Washington, D.C., 20585.

Order

In view of the foregoing and pursuant to the authority delelgated to me by the Secretary of Energy, I hereby approve proposed Rate Schedule TDC–82 for submission to the FERC to be effective on a final basis upon confirmation and approval by the FERC through September 30, 1988.

Issued at Washington, D.C., this 4th day of November 1983.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

United States Department of Energy
Southwestern Power Administration

Rate Schedule TDC–82

Wholesale Rates for Transmission and/or Displacement of Non-Federal Power and Energy Over the System of Southwestern

Effective: As of the first day of the month following issuance, and thereafter in accordance with the Order of the Federal Energy Regulatory Commission, dated ————, Docket No. ————.

Applicable: In the marketing area of the Southwestern Power Administration (SWPA) described generally as the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas to wholesale power customers of SWPA and other electric utilities whose transmission facilities interconnect with the transmission facilities of SWPA. Non-Federal power and energy will be, by contract, transmitted and/or displaced over those portions of the transmission and related facilities owned and operated by SWPA (Systerm of SWPA) in which the Administrator, SWPA, in his sole judgement, determines that the transmission and transformation capacities are and will be available in excess of that required to market power and energy pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 890).

Character and Conditions of Service: Non-Federal power and energy will be received into the System of SWPA as scheduled by SWPA, transmitted and/or displaced between two points on the system of SWPA and delivered at the voltage level of the point or points of delivery as 3-phase alternating current, at approximately 60 hertz as specified by contract. Energy losses will be the responsibility of the customer and will be provided to SWPA as specified by contract.

Transmission Demand: The Transmission Demand for each point of delivery for any month shall be the number of kilowatts equal to either—

(i) the maximum rate in kilowatts at which non-federal power and energy was delivered from the System of SWPA at such point of delivery during any sixty-minute period during such month; or

(ii) the maximum Transmission Demand established at such point of delivery at any time during the preceding eleven months, whichever quantity is greater.

Interruptible Transmission: A. *Availability.* Interruptible Transmission is transmission and transformation capability that could be utilized for economy energy interchange and in emergencies on a short-term basis of less than one month at such times and in such amounts as requested and as SWPA determines to be available.

B. *Interruptible Transmission Demand.* The Interruptible Transmission Demand at each point of delivery for any day shall be the maximum rate of delivery in kilowatts during any sixty-minute period of each day.

Rates: Compensation due SWPA for the transmission and/or displacement over the System of SWPA of non-federal power and energy shall be computed at the following rates:

(1) $0.30 per kilowatt per month of Transmission Demand for the transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at 138 kV or 161kV.

(2) $0.50 per kilowatt per month of Transmission Demand for the transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at 69 kV.

(3) $0.70 per kilowatt per month of Transmission Demand for the transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at voltages of less than 69 kV.

(4) 5% of (1), (2) or (3) amounts above per kilowatt per day for the Interruptible Transmission Demand at a given delivery voltage as applicable.

(5) $0.001 per kilowatt-hour for the transmission and/or displacement of non-federal energy without associated non-federal power to point or points of delivery from the System of SWPA.

When power and/or energy is delivered at two or more voltages, the delivery voltage(s) shall be as specified by contract.

Minimum Monthly Bill: The minimum bill for any month shall be equal to the rate times the sum of the Transmission Demands for each point or points of delivery for such month. There shall be no minimum monthly bill for interruptible transmission service.

Adjustment for Power Factor: An hourly power factor shall be maintained at each point of deliverly of not less than 95% lagging. If during any hour in any particular month it is determined that at any point or points of delivery the hourly power factor at such point of delivery was less than 95% lagging, the Transmission Demand for such particular month for each such point or points of delivery shall be adjusted in accordance with the formula—

$$ATD = \frac{TD \times 0.95}{PF}$$

with the factors defined as follows:

ATD = The Adjusted Transmission Demand for a particular point of delivery for any month during which the power factor was determined to be less than 95% lagging.
TD = The Transmission Demand for such month.
PF = The power factor determined for such month.

[FR Doc. 83-30897 Filed 11-15-83; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30228 PH-FRL 2468-5]

Certain Companies; Applications to Register Pesticide Products Containing New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 16, 1983.

ADDRESS: Written comments, identified by the document control number [OPP-302281] and the file symbol, should be submitted to: Product Manager (PM), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: The product manager at the telephone number cited.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Applications Received

1. File Symbol: 707-RTL. Applicant: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. Product name: Anti-Foulant C-9211M. Technical for manufacturing use. Active ingredients: 4,5-Dichloro-2-*n*-octyl-3-(2*H*)-isothiazolone 35.0 percent and 4-chloro-2-*n*-octyl-3-(2*H*)-isothiazolone 5.0 percent. Proposed classification/Use: General. For technical use in formulating antifouling paints. (Product Manager (PM) 23-Richard Mountfort, (703-557-1830)).

2. File Symbol: 39398-RA. Applicant: Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. Product name: Danitol™ Technical. Insecticide. Active ingredient: Fenpropathrin (alpha cyano-3-phenoxybenzyl 2,2,3,3-tetramethyl cyclopropanecarboxylate) 90.0 percent. Proposed classification/Use: General. For formulating use only. Type registration: Conditional. (PM 17-Tim Gardner, 703-557-2690)).

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: November 3, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-30537 Filed 11-15-83; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 17-44
Title: Far East Conference
Parties: Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Maritime Company of the Philippines, Mitsui O.S.K. Lines, Ltd., A. P. Moller-Maersk Line, Nippon Yusen Kaisha, United States Lines, Inc., Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 17-44 would amend the basic agreement to: (1) Provide that the parties shall meet in conference on dates designated by the Chairman; (2) employ a Chairman who is in no way connected with any member of the Conference and who will preside over the meetings except meetings at Principals Level which can be chaired by a Senior Level Representative: (3) state that the personnel and length of terms of Executive Committee members may be amended at any Conference meeting and duly recorded in Conference minutes; (4) provide that the Executive Committee shall determine any additional duties of the Chairman; (5) define a Conference quorum; (6) provide for telephone polls to be included in the voting requirements; (7) provide for membership withdrawal and other minor administrative procedures.

Filing Party: Gerald J. Flynn, Chairman, Far East Conference, 40 Rector Street, New York, New York 10006

Agreement No.: 9976-6
Title: Mediterranean Associated Conferences Cooperative Working Arrangement
Parties: Greece/U.S. Atlantic Rate Agreement, Iberian/U.S. North Atlantic Westbound Freight Conference, Italy, South France, South Spain, Portugal/U.S. Gulf and Puerto Rico Conference, Marseilles/North Atlantic U.S.A. Freight Conference, Mediterranean North Pacific Coast Freight Conference, North Atlantic Mediterranean Freight Conference, U.S. North Spain Rate Agreement, U.S. South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement, West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Agreement

Synopsis: Agreement No. 9976–6 would amend the basic agreement to: (1) Extend the duration of the agreement for an idenfinite period beyond its expiration date of March 2, 1984; (2) simplify and streamline various administrative procedures, and (3) restate the agreement in its entirety.

Filing party: Anthony J. Ciccone, Jr., Esquire, Billing, Sher & Jones, P.C., 2033 K Street, NW., Suite 300, Washington, D.C. 20006

Agreement No.: T–3597–4

Title: Puerto Rico Ports Authority and Trailer Marine Transport Corporation, Amended Termal Lease Agreement

Parties: Puerto Rico Ports Authority (PORTS) and Trailer Marine Transport Corporation (TMT)

Synopsis: Agreement No. T–3597–4 modifies the parties' basic agreement providing for TMT's preferential use of adjacent back-up area at Isla Grande, San Juan, Puerto Rico. The purpose of this amendment is to adjust areas covered by the lease agreement and their pertinent rental cost.

Filing Party: Nestor D. Ramirez Cuebas, General Legal Counsel, G.P.O. Box 2829, San Juan, Puerto Rico 00936

Agreement No.: T–4146

Title: Jacksonville Port Authority and Trans Freight Lines, Inc. Leasing Agreement

Parties: Jacksonville Port Authority (PORT), Trans Freight Lines (TFL)

Synopsis: Agreement No. T–4146 provides for the leasing by TFL of seven acres of improved open storage area for a period of one year from the Port on Blount Island in the Port of Jacksonville.

Filing party: Mr. C. B. Prosuch, Director of Finance, Jacksonville Port Authority, P.O. Box 3005, 2831 Talleyrand Avenue, Jacksonville, Florida 32206

Agreement No.: T–4147

Title: South Carolina Port Authority and International Paper Company Lease Agreement

Parties: South Carolina State Port Authority, International Paper Company

Synopsis: Agreement No. T–4147 would permit International Paper Company to lease State Pier 31 at Georgetown for handling, storing and transhipping its goods, and the goods of others, to or from its facilities or the facilities of others.

Filing party: W. M. Lawrence, Esquire, South Carolina State Ports Authority, P.O. Box 817, Charleston, South Carolina 29402

By Order of the Federal Maritime Commission.

Dated: November 10, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83–30818 Filed 11–15–83; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; F&M Bancorporation, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Bancorporation, Inc.,* Kaukauna, Wisconsin; to acquire 80 percent of the voting shares or assets of State Bank of Hilbert, Hilbert, Wisconsin. Comments on this application must be received not later than December 6, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Bancorporation, Inc.,* Sapulpa, Oklahoma; to acquire 100 percent of the voting shares or assets of Mannford State Bank, Mannford, Oklahoma. Comments on this application must be received not later than December 6, 1983.

2. *Army National Bancshares, Inc.,* Chillicothe, Missouri; to acquire 20.13 percent of the voting shares or assets of Exchange National Bank, Cottonwood Falls, Kansas. Comments on this application must be received not later than December 7, 1983.

Board of Governors of the Federal Reserve System, November 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83–30796 Filed 11–15–83; 8:45 am]

BILLING CODE 6210–01–M

Formation of Bank Holding Company; Learner Financial Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 83–28908), published at page 49381 of the issue for Tuesday, October 25, 1983. Learner Financial Corporation, Orinda, California, has also applied for the Board's approval to acquire 100 percent of the voting shares of Scott Valley Bank, Yreka, California. Comments on this application must be received not later than November 29, 1983.

Board of Governors of the Federal Reserve System, November 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83–30797 Filed 11–15–83; 8:45 am]

BILLING CODE 6210–01–M

Formation of Bank Holding Companies; L.N.B. Bancorp Inc.; et al.

The companies listed in this notice have applies for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the office of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any coment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *L.N.B. Bancorp. Inc.,* Lorain, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Lorain National Bank, Lorain, Ohio. Comments on this application must be received not later than December 9, 1983.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President), 701 East Boyd Street, Richmond, Virginia 23261:

1. *Northeast Bancorp, Inc.*, Wilmington, Deleware; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank of North East, North East, Maryland. Comments on this application must be received not later than Decempbe 9, 1983.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank & Trust Company of Springfield, Springfield, Illinois; Mechanicsburg, Citizen Bank, Mechanicsville, Illinois; American State Bank of Springfield, Springfield, Illinois; Community Bank of Divernon, Divernon, Illinois; and Stonington Community Bank, Stonington, Illinois. Comments on this application must be received not later than December 9, 1983.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *McKenzie Bancshares, Inc.*, McKenzie, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of McKenzie Banking Company, McKenzie, Tennessee. Comments on this application must be received not later than December 9, 1983.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Lexington Bancshares, Inc.*, New Ulm, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to the Lexington State Bank, Lexington, Texas. Comments on this application must be received not later than December 7, 1983.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Pacific Regency Bancorp*, El Toro, California; to become a bank holding company by acquiring 100 percent of the voting shares of Pacific Regency Bank, El Toro, California. Comments on this application must be received not later than December 7, 1983.

Board of Governors of the Federal Reserve System, November 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-30798 Filed 11-15-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by a Bank Holding Company; Norstar Bancorp, Inc.

Norstar Bancorp, Inc. Albany, New York, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. section 1842(a)(3)) to become a bank holding company by acquiring 100 percent of the voting shares of Security New York State Corporation, Rochester, New York and thereby indirectly acquire Security Trust Company of Rochester, Rochester, New York, First Trust Union Bank, Wellsville, New York, The Mohawk National Bank, Schenectady, New York, First Bank and Trust Company of Ithaca, Ithaca, New York, The Bank of Auburn, Auburn, New York, Genesee Country Bank, LeRoy, New York, First Bank and Trust Company of Corning, Corning, New York, The State Bank of Seneca Falls, Seneca Falls, New York, and Glen Bank and Trust Company, Watkins Glen, New York. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Norstar Bancorp, Inc., Albany, New York, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Griffin Life Insurance Company, Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage in the activities of the reinsurance of credit-related insurance. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interestes, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than December 7, 1983.

Board of Governors of the Federal Reserve System, November 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-30795 Filed 11-15-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81P-0078 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Deputy Director of FDA's National Center for Devices and Radiological Health (NCDRH) has approved variances from the performance standard for laser products for certain laser light shows or laser light show projectors manufactured and produced by seven organizations. The projector provides a laser display to produce a variety of special lighting effects principally to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below.

ADDRESS: The application and all correspondence on the various applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Norbert P. Heib, Jr., National Center for Devices and Radiological Health (HFX-460), Food and Drug Administration,

5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), each of the organizations listed in the table below has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product which is the manufacturer's particular variety of laser light show or laser light show projector or both, assembled and produced by it. All the laser products will have levels of accessible laser radiation in excess of the Class II levels permitted by § 1040.11(c) but not exceeding those required to perform the intended function of the product.

NCDRH has determined that suitable means of radiation protection will be provided by constraints on the physical and optical design of the products, and by procedures for personnel who will operate the products. Therefore, on the dates specified in the table below, FDA approved the requested variances by letter from the Deputy Director of NCDRH to each manufacturer listed in the table.

To associate the product with the variance granted to the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) the docket number (which is the identifying number of the variance) and effective date of the variance as specified in the table below.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date termination date
81–0078 (Extension)	Blagden Food and Beverage, Inc. (d.b.a.) Chaps Disco), 27–31 Huntington Avenue, Boston, Massachusetts 02116.	The variance is granted for the laser light shows assembled and produced by Blagden Food and Beverage, Inc. d.b.a. Chaps Disco. These shows incorporate Image Engineering Model 350 and 390 Series laser projectors which utilize up to an 8 Watt argon, 2 Watt Krypton and/or 2 Watt CW dye laser(s).	May 29, 1983. May 29, 1985.
82P–0007 (Amendment)	Memphis Pink Palace Museum Foundation, Inc., 3050 Central Avenue, Memphis, Tennessee 38111.	The variance is granted for the Memphis Pink Palace Museum Foundation, Inc. laser light shows and the firm's argon krypton, and/or helium neon laser projectors incorporated in these shows. This variance does not permit sale, lease, or loan of projection systems to other parties. Also, audience scanning is not included and shall not be done under this variance.	July 20, 1983. Jan. 18, 1985.
83V–0171	L. F. Donnell Ford, 7955 Market Street, Youngstown, Ohio 44512.	The variance is granted for the L. F. Donnell Ford Showroom laser light show incorporating a Laser Media LMS Series laser projector.	Aug. 5, 1983. Aug. 5, 1985.
83V–0180	Duval Enterprises, Inc. d.b.a. PRISM, 2140 Market Street, San Francisco, California 94114.	The variance is granted for the PRISM laser light show and the LLS Laserguide 5000 projector system incorporated into this show. The projector contains a Class IV argon and/or krypton laser.	June 3, 1983. June 3, 1985.
83V–0228	The Space Center Tombaugh Planetarium, P.O. Box 533, Alamogordo, New Mexico 88310.	The variance is granted for the Space Center's Tombaugh Planetarium laser light show incorporating the Laser Systems Development Corporation Laser Projector Model C–3(a).	Aug. 5, 1983. Aug. 5, 1985.
83V–0238	Concord Ranch, Baltimore Pike, U.S. 1, Glenn Mills, Pennsylvania 19342.	The variance is granted for the Concord Ranch laser light shows assembled and produced by Concord Ranch with the firm's Class IV Pulsations model series ion laser projectors.	Aug. 5, 1983. Aug. 5, 1985.
83V–0252	Metro 700 Entertainment Corp., 700 Hempstead Turnpike, Franklin Square, New York 11010.	The variance is granted for the laser light shows and the incorporated Class IV argon/krypton laser projection system all of which are assembled and produced by Metro 700 Entertainment Corporation.	Sept. 8, 1983. Sept. 8, 1985.

In accordance with § 1010.4, the application and all correspondence (including the written notice of approval) on the various applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 8, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–30808 Filed 11–15–83; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Health Professions Education

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, Telephone (202) 245–6791. Copies may be obtained from Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Health Resources and Services Administration, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6880.

Dated: November 8, 1983.

Jackie E. Baum,

Advisory Committee Management Officer, Health Resources and Services Administration.

[FR Doc. 83–30835 Filed 11–15–83; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

Board of Scientific Counselors, National Institute of Dental Research; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 7, 8 and 9, 1983, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on December 7 and from 9:00 a.m. to 2:00 p.m. on December 8 to discuss program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 2:00 p.m. to recess on December 8 and from 9:00 a.m. to adjournment on December 9 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators,

the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Marie U. Nylen, Director of Intramural Research, NIDR, National Institutes of Health, Building 30, Room 132, Bethesda, MD 20205, (telephone 301 496–1483) will provide summaries of meeting, rosters of committee members, and substantive program information.

Dated: November 7, 1983.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 83-30832 Filed 11-15-83; 8:45 am]

BILLING CODE 4140-01-M

Board of Scientific Counselors, National Eye Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 5–6, 1983, Building 31, Room 6A–35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 5 from 8:30 a.m. until approximately 4:00 p.m. for general remarks by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 5 from approximately 4:00 p.m. until adjournment on December 6 for review, discussion, and evaluation of individual projects conducted by the Section on Ophthalmic Pathology of the Clinical Branch and Section on Experimental Pathology of the Laboratory of Vision Research, NEI. This evaluation and discussion could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of the meeting and rosters of committee members.

Substantive program information may be obtained from Dr. Jin Kinoshita, Scientific Director, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20205 (telephone 301/496–7483).

Dated: November 7, 1983.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 83-30831 Filed 11-15-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Coal Lease Application C–36446]

Availability of Environmental Assessment, and Request for Public Comment; Colorado; Public Hearing

The Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held on December 6, 1983, at 7:30 p.m. in the Valley Federal Bank, Friendship Room, 1st and Grand Ave., Paonia, Colorado 81428. Application has been made by U. S. Steel Corporation to the United States that it offer for lease certain coal resources in the lands hereinafter described. The purpose of the hearing is to obtain public comments on the Environmental Assessment and on the following items: (1) The method of mining to be employed to obtain maximum economic recovery of the coal; (2) the impact that mining the coal in the proposed leasehold may have on the area, including, but not limited to, impacts on the environment; and (3) methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the December 6, 1983, public hearing should be received at the Uncompahgre Basin Resource Area Headquarters, Bureau of Land Management, 336 S. 10th, Montrose, Colorado 81401, prior to the close of business December 6, 1983. People who indicate they wish to testify when they check in at the hearing may have an opportunity if time is available.

Both oral and written comments will be received at the public hearing, but speakers will be limited to a maximum of three or five minutes each depending on the number of persons desiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. Written comments regarding the Environmental Assessment may also be submitted to the Uncompahgre Basin Resource Area Headquarters at the above address, prior to close of business on December 9, 1983.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resources in the described lands. Comments should address specific factors related to fair market value including, but not limited to: the extent and quality of the coal resources, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms and conditions, may also be submitted. These comments will be considered in the final determination of fair market value as determined in accordance with 43 CFR 3485.2. Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Comments on fair market value should be sent to the State Director (CO–920), Bureau of Land Management, Colorado State Office, 1037–20th Street, Denver, Colorado 80202, to arrive no later than December 9, 1983.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The coal resource to be offered is limited to coal recoverable by underground mining methods from Seam B in the following lands located approximately 10 miles northeast of the town of Paonia, Colorado:

T. 13 S., R. 90 W., 6th P.M.
Sec. 6, lots 9 and 14.
The land described contains 78.51 acreas.

The average coal quality is approximately as follows: Btu 13,000; Sulfur 0.5%; Ash 7.5%

The draft Environmental Assessment is available for review in the Upcompahgre Basin Resource Area Headquarters. Single copies are available for distribution upon request from that office.

A copy of the Enviromental Assessment, the case file and the comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter and meeting exemptions

stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, Bureau of Land Management.

Evelyn W. Axelson,

Acting Chief, Mineral Leasing Section.

[FR Doc. 83-30840 Filed 11-15-83; 8:45 am]

BILLING CODE 4310-84-M

Competitive Coal Lease Offering by Sealed Bid Carr Fork Lake Corps of Engineers Project Knott County, Kentucky

AGENCY: Eastern States Office, Bureau of Land Management, Interior.

ACTION: Competitive Coal Lease Offering by Sealed Bid.

SUMMARY: Notice is hereby given that as a result of applications filed by Kodak Mining Company (ES 30490) and River Processing, Incorporated (ES 30967), for coal resources in the Fire Clay seam within the Amburgey Undefined Know Recoverable Coal Resource Area, Knott County, Kentucky, these coal resources will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Lands Leasing Act of 1947 (61 Stat. 913, 30 U.S.C. 351–359), as amended. The applicants have satisfactorily demonstrated under regulation 43 CFR 3425.1–4 that if the coal deposits are not leased, they will be bypassed in the reasonably foreseeable future.

The applications have been combined into one parcel as described below:

Parcel

Applications ES 30490 and ES 30967
Tracts 457, 458, and 5M,
Containing approximately 196.15 acres.

The tracts will be leased to the qualified bidder of the highest cash amount provided that the high bid for the tracts equals or exceeds the fair market value (FMV) of the tracts as determined by the authorized officer after the sale. The Department has established a minimum bid of $100.00 per acre for all tracts. This minimum bid is not to be considered as representing the amount for which the tracts may actually be leased, since FMV will be determined in a separate post sale analysis. If identical high sealed bids are received for the parcel, the tying high bidders will be asked to submit follow up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within five (5) minutes the authorized officer's announcement at the sale that identical high bids have been received.

DATE: The sale will be held at 10:00 A.M., Tuesday, December 20, 1983, in the Public Room, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. All bids must be submitted to the Bureau of Land Management, Eastern States Office, at the above address. The bids should be sent by cerified mail, return receipt; or be hand-delivered. Any bids received after 4:00 P.M., Monday, December 19, 1983, will not be considerd.

SUPPLEMENTARY INFORMATION: The coal resources being offered are to be mined underground from the Fire Clay seam within the Amburgey Underfined Known Recoverable Coal Resource Area, Knott County, Kentucky, northeast of the confluence of Irishman Creek and Carr Fork Lake. The metes and bounds description is available at the Eastern States Office at the address listed above.

In-place minerable Federal reserves are estimated to be 370,000 tons. The coal quality is expected to average 12,500–13,000 B.T.U./lb. with 6.8–8.0% ash, less than 1.0% sulfur and 4.01% moisture. The coal classified as high volatile "A" bituminous. Other detailed chemical analyses are available upon request from the Bureau of Land Management, Eastern States Office, Branch of Fluid and Solids Minerals, at the address listed above.

Rental and Royalty

Any lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 8 percent of the value of coal produced by underground mining methods. The value of the coal shall be determined in accordance with 43 CFR 211.63.i

Notice of Availability

Bidding instructions and bidder qualifications are included in the Detailed Statement of the Lease Sale. Copies of the Statement and of the proposed coal leases are available at the Bureau of Land Management, Eastern States Office. Case file documents are available for public inspection at the Eastern States Office.

FOR FURTHER INFORMATION CONTACT: Ida Doup, (703)235–2851.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 83-30847 Filed 11-15-83; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Disposal of Public Lands, Bernalillo County, New Mexico

AGENCY: Bureau of Land Management, Albuquerque District Office.

ACTION: Notice of Realty Action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management (BLM) is proposing to dispose of approximately 238.51 acres of public land in the South Valley of Albuquerque, Bernalillo County, New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the 238.51 acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069) and 1932 (47 Stat. 53, 43 U.S.C. 178). The Recreation and Public Purposes Act (43 U.S.C. 869 et seq).

Albuquerque, South Valley, Public Land Broadway Disposal Block

T. 10 N., R. 3 E., NMPM,
Section 31: A portion of the E½ of the N¼; A portion of the SW¼ of the NE¼; The SW¼ of the SE¼; A portion of the NW¼ of the SE¼; A portion of the E½ of the SW¼
Section 32: Lot 4, 7, 14, 15.
Comprising approximately 238.51 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande, Management Framework Plan. (2) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands. Consequently, disposal would best serve the public interest. (3) Various public meetings were held throughout the area during the land use planning process. An additional public meeting was held by the City park. (4) This notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional delegation and the relevant congressional committees by BLM.

The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualified under the Color-of-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who have occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

3. *Public Purposes.* If unoccupied lands within the disposal area are

identified for recreational or other public purposes by state or local governments or other qualified public purposes applicants, they will be considered for disposal under the R&PP Act.

4. *Competitive Sale.* On unoccupied tracts that have no public value, the terms and conditions of the disposals are: (1) All disposals will be made subject to prior valid existing rights. (2) All the minerals in the public lands covered by this Notice of Realty Action, along with the rights to explore, prospect for, mine and remove the minerals will be reserved to the United States. (3) Tracts which lie within the Rio Grande will be subject to EO 11988 which precludes the seeking of compensation from the U.S or its agencies in the event existing or future facilities on those tracts are damaged by flood.

Additional information pertaining to this disposal including the environmental documents are available for review in the Rio Puerco Resource Area Office, 3540 Pan American Freeway, NE, Albuquerque, New Mexico 87107 or telephone 505–766–3114. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Rio Puerco Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Paul Applegate,

District Manager.

[FR Doc. 83–30749 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–84–M

[W–81326B]

Realty Action; Proposed Noncompetitive Sale of Public Lands in Laramie County, Wyoming

Correction

In FR Doc. 83–28967 beginning on page 49388 in the issue of Tuesday, October 25, 1983, make the following corrections:

1. On page 48388, third column, in the heading at the beginning of the document, "[W–31326B]" should have read "[W–81326B]".

2. Below the heading insert the issuance date of "October 17, 1983".

BILLING CODE 1505–01–M

Realty Action; Competitive Sale of Public Lands; Camas County, Idaho

Correction

In FR Doc. 83–28645 beginning on page 48870 in the issue of Friday, October 21, 1983, make the following corrections:

1. On page 48871, first column, in the land description table, under I–20329, Sec. 14, "S½NE¼" should have read "S½NW¼".

2. Two paragraphs below the table, "August 30, 1980" should have read "August 30, 1890".

3. Same column, ten lines from the bottom of the page, "convenant" should have read "covenant".

4. Second column of the page, three lines from the top, "convenant" should have read "covenant".

5. In the same column, under date, fourth line, "December 23, 1883" should have read "December 23, 1983".

BILLING CODE 1505–01–M

[Group 812]

Filing of Plat of Survey; California

November 3, 1983.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian

T. 40 N., R. 3 W.,
T. 41 N., R. 3 W.

2. This plat, representing the dependent resurvey of a portion of the Eighth Standard Parallel North on the south boundary of T. 41 N., R. 3 W., the east boundary and portions of the south and west boundaries and subdivisional lines, of T. 40 N., R. 3 W., Mount Diablo Meridian, under Group No. 812, California, was accepted September 15, 1983.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the U.S. Forest Service and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Dated: November 8, 1983.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 83–30836 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–84–M

[Groups 770 & 779]

Filing of Plat of Survey; California

November 4, 1983.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian

T. 9 N., R. 30 W.;
Tps. 9 & 10 N., Rs. 31 & 32 W;
T. 10 N., R. 33 W.

2. These plats, representing (1) the dependent resurvey of the north boundary of the Sisquoc Rancho T. 9 N., R. 30 W., San Bernardino Meridian; (2) the dependent resurvey of the Sisquoc Rancho, in Tps. 9 and 10 N., Rs. 31 and 32 W., and the north and east boundaries and subdivisional lines, of T. 9 N., R. 31 W., San Bernardino Meridian; (3) the dependent resurvey of portions of the Tepusquet Rancho and Sisquoc Rancho, the limiting boundaries of fractional sections, and a portion of the exterior boundaries and subdivisional lines and the exterior boundaries and subdivisional lines and the extension survey and survey of a portion of the subdivisional lines of T. 9 N., R. 32 W., San Bernardino Meridian; (4) the dependent resurvey of portions of the Rancho de Suey, Tepusquet Rancho, and the Sisquoc Rancho, in Tps. 10 N., Rs. 32 and 33 W., the limiting boundaries of fractional sections, and a portion of the exterior boundaries and subdivisional lines of T. 10 N., R. 32 W., and the extension survey and survey of a portion of the subdivisional lines and the survey of the subdivision of section 34, T. 10 N., R. 32 W., San Bernardino Meridian, under Group Nos. 770 and 779, California were accepted October 7, 1983.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of Santa Barbara County, the U.S. Forest Service and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E–2841, Sacramento, California 95825.

Dated: November 8, 1983.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 83–30837 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Alaska Outer Continental shelf; Availability of Final Supplemental Environmental Impact Statement to the Final Environmental Impact Statement for the St. George Basin

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Managements Service has prepared a final supplemental environmental impact statement (EIS) to the final EIS in the St. George Basin.

Single copies of the final supplemental EIS can be obtained from the Office of the Regional Manager, Minerals Management Service, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510.

Copies of the final supplemental EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point, AK 99556; Department of the Interior Resources Library, Box 36, 701 C Street, Anchorage, AK 99513; Cordova Public Library, Box 472, Cordova, AK 99574; Kenai Community Library, Box 157, Kenai, AK 99611; Elim Learning Center, Elim, AK 99739; Haines Public Library, P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Homer Public Library, Box 356, Homer, AK 99603; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447, Juneua AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651, Wrangell, AK 99929.

David C. Russell,

Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 83–30854 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Mark Producing

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Mark Producing, Unit Operator of the High Island Blocks A–462/A–475 Federal Unit Agreement No. 14–08–0001–20236, submitted on November 2, 1983, a proposed supplemental plan of development describing the activities it proposes to conduct on the High Island Blocks A–462/A475 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 7, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 83–30838 Filed 11–15–83; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Fort Scott National Historic Site, Kansas; Correction of Boundary Map

AGENCY: National Park Service, Interior.

ACTION: Correction of Boundary Map.

SUMMARY: On November 8, 1979, a notice of establishment of the park boundaries for the Fort Scott National Historic Site, Kansas, was published in the **Federal Register**, Vol. 44, No 218, Pages 64920 and 64921. This notice set out in a map and legal description the boundaries of the Fort Scott National Historic Site.

It has been discovered that the map and legal description erroneously included 0.14 acres of land which was inadvertently donated to the United States by the City of Fort Scott, Kansas. The City of Fort Scott has subsequently conveyed to the United States by a corrected Warranty Deed of Donation the land intended to be conveyed.

Now Therefore, in order to correct certain minor errors, the following corrections are made to the boundary map and legal description:

Page 64920

Second paragraph, fifth line

April 30, 1979, and numbered 471–80010, is corrected to read: March 24, 1982, and numbered 471–80010A,

Page 64920

Third paragraph, seventh line

S 82 degrees 48′ 01″ E, 30.82 feet; is corrected to read: S 82 degrees 48′ 01″ E, 30.81 Feet;

Page 64920

Third paragraph, twentieth line

thence S 43 degrees 16′ 28″ W, 442.42 feet down the east line of Henricks Street; thence S 0 degrees 28′ 26″ W,

96.30 feet; thence N 89 degrees 22' 34" W, 49.00 feet; thence N 0 degrees 28' 26" E, 125.25 feet; is corrected to read: thence S 43 degrees 16' 28" W, 231.96 feet down the east line of Hendricks Street; thence N 0 degrees 28' 26" E, 54.00 feet; thence S 43 degree 16' 28" W, 204,58 feet; thence S 0 degrees 28' 26" W, 154.63 feet; thence N 89 degrees 22' 34" W, 53.00 feet; thence N 0 degrees 28' 26" E, 125.25 feet;

Page 64920

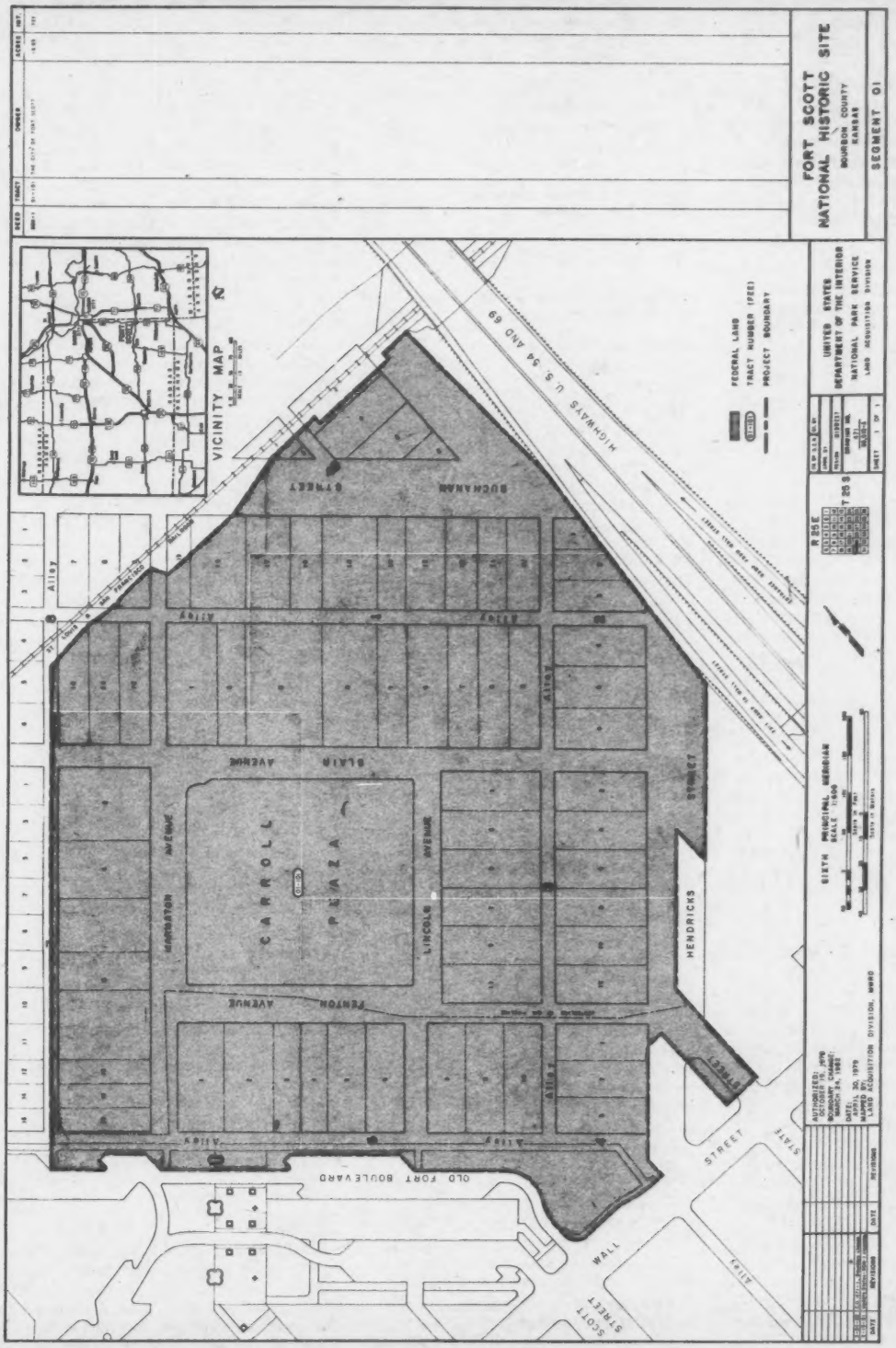
Third paragraph fifty-fifth line containing 16.855 acres, is corrected to read: containing 16.69 acres.

The remainder is correct

Randall R. Pope,

Acting Regional Director, Midwest Region National Park Service.

BILLING CODE 4310-70-M



[FR Doc. 83-30885 Filed 11-15-83; 8:45 am]
BILLING CODE 4310-70-C

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-144]

Certain Direct Current Brushless Axial Flow Fans; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Matsushita Electric Industrial Co., Ltd., and Matsushita Electric Corporation of America.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the intitial determination. The initial determination in this matter was served upon the parties on November 9, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days afer publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Officer of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: November 9, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30806 Filed 11-15-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-123 (Final)]

Certain Flat-Rolled Carbon Steel Products From Brazil

AGENCY: International Trade Commission.

ACTION: The date for filing prehearing briefs in connection with this investigation is hereby set for January 26, 1984. As stated in the notice published in the Federal Register of October 19, 1983 (48 FR 48536), the Commission's public hearing will be held on January 31, 1984.

EFFECTIVE DATE: November 7, 1983.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202-523-0339), Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436.

Issued: November 7, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30807 Filed 11-15-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-121]

Certain Plastic-Capped Decorative Emblems; Lifting of Suspension and Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Lifting of suspension and termination of investigation.

SUMMARY: Notice is hereby given that the Commission has lifted the suspension of the above-captioned investigation and granted a joint motion by complainant, the Commission investigative attorney, and all respondents to terminate the investigation.

Authority

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.51).

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by D. L. Auld Company, the Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 by reason of unfair methods of competition and unfair acts in the importation and sale of certain plastic-capped decorative emblems alleged to infringe claim 1 of U.S. Letters Patent 4,100,010 ('010 patent), claim 1 of U.S. Letters Patent 4,139,654 ('654 patent), and claim 1 of U.S. Letters Patent 4,259,388 ('388 patent). Notice of the Commission's investigation was published in the Federal Register of May 19, 1982 (47 FR 21639).

Complainant Auld, the Commission investigative attorney, and all respondents moved on November 22, 1982, for a suspension of the investigation pending appeal to the U.S. Court of Appeals for the Federal Circuit (CAFC) of a U.S. district court ruling that the '010 patent is invalid. Effective November 15, 1982, the Commission suspended the investigation. On August 15, 1983, the CAFC issued its decision affirming the ruling of the district court that the '010 patent is invalid. Complainant had previously stipulated that the '654 patent and '388 patent are not infringed by the decorative emblems imported and sold by respondents. On October 3, 1983, complainant, the Commission investigative attorney, and respondents filed a joint motion to terminate the investigation. (Motion 121-14C.)

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-3395.

Issued: November 10, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30903 Filed 11-15-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-124 (Final)]

Fall-Harvested Round White Potatoes From Canada

AGENCY: International Trade Commission.

ACTION: Change in time for the public hearing.

Information

The beginning time for the public hearing to be held on investigation No. 731-TA-124 (Final), fall-harvested round white potatoes from Canada, is hereby changed from 10:00 a.m. to 9:00 a.m. The hearing is still to be held on November

18, 1983, in the Ballroom of the Ramada Inn, 1230 Congress Street, Portland, Maine 04102.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1983, the United States International Trade Commission (Commission) published in the **Federal Register** (48 FR 39518), its notice of the institution of its final antidumping investigation No. 731–TA–124, relating to certain potatoes from Canada, and the scheduling of a public hearing to be held in connection with the investigation. On September 23, 1983, the Commission published in the **Federal Register** (48 FR 43412), a revised notice of institution of investigation No. 731–TA–124 (Final), and the rescheduling of the public hearing to be held in connection with the investigation.

FOR FURTHER INFORMATION CONTACT: Mr. George Deyman, Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436 (202–523–0481).

The notice is published pursuant to § 207.23 of the Commission's rules (19 CFR 207.23).

Issued: November 10, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30904 Filed 11-15-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–203 (Preliminary) and 731–TA–152 (Preliminary)]

Pads for Woodwind Instrument Keys from Italy

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: November 7, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of preliminary countervailing duty investigation (No. 701–TA–203) under Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and preliminary antidumping investigation (No. 731–TA–152) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of pads for woodwin instrument keys, provided for in item 726.70 of the Tariff Schedules of the United States, which are allegedly subsidized by the Government of Italy, and also are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Supervisory Investigator, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition, filed on November 7, 1983, on behalf of Prestini Musical Instruments Corp., Nogales, Arizona. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petition, or by December 21, 1983 (19 CFR 207.17).

Participation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the persons desiring to file an entry.

Service of documents

The Secretary will compile service lists from the entries of appearance filed in these investigations. Any party submitting a document in connection with these investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b), as amended by 47 FR 33682, August 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course to these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions

Any person may submit to the Commission on or before December 2, 1983, a written statement of information pertinent to the subject matter of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8.)

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference to be held concurrently in connection with these investigations for 9:30 a.m. on November 30, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact Mr. John MacHatton (202–523–0439), not later than 1:00 p.m., November 29, 1983, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection

Copies of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207, as amended by 47 FR 33682, August 4, 1982), and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, August 4, 1982).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 9, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30805 Filed 11-15-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-171]

Certain Glass Tempering Systems; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 11, 1983, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Glasstech, Inc., Ampoint Industrial Park, 995 Fourth Street, Perrysburg, Ohio 43551. The complaint alleges unfair methods of competition and unfair acts in the importation of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces into the United States, or in their sale, by reason of alleged (1) infringement of claims 39–42 of U.S. Letters Patent 3,806,312; and (2) infringement of claim 1 of U.S. Letters Patent 3,994,711. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 7, 1983, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces into the United States, or in their sale, by reason of alleged (1) infringement of claims 39–42 of U.S. Letters Patent 3,806,312; or (2) infringement of claim 1 of U.S. Letters Patent 3,994,711, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hearby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Glasstech, Inc., Ampoint Industrial Park, 995 Fourth Street, Perrysburg, Ohio 43551.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Tamglass OY, Vehmaistnkatu 2, 33730 Tampere 73, Finland

Tamglass, Inc., 485 Mansfield Avenue, Pittsburgh, Pennsylvania 15205.

(c) Juan Cockburn, Esq., Unfair Import Investigation Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–1272.

Issued: November 10, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-30814 Filed 11-15-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-137]

Certain Heavy-Duty Staple Gun Tackers; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is herby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 26) terminating Alltrade, Inc. (Alltrade) as a respondent to the above-captioned investigation.

Authority

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On March 2, 1983, the Commission instituted investigation No. 337–TA–137 to determine whether there is a violation of section 337 in the unauthorized importation and sale of certain heavy-duty staple gun tackers by virtue of alleged common law trademark infringement, false designation of origin, and passing off. 48 FR 8875. On September 20, 1983, complainant Arrow Fasterner Corp., Inc. (Arrow and respondent Alltrade filed a joint motion (Motion No. 137–22) to terminate Alltrade as a respondent to this investigation on the basis of a settlement agreement. The motion was unopposed.

On October 21, 1983, the presiding officer granted the motion (Order No. 26). Notice of the proposed termination of Alltrade was published in the **Federal Register** of October 26, 1983 (48 FR 49557). No petitions for review or agency or public comments were received.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official

business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

Issued: November 10, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30913 Filed 11–15–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–137]

Certain Heavy-Duty Staple Gun Tackers; Commission Decision Not To Review Initial Determination Terminating Chen Dah Machinery Ltd. as a Respondent to the Investigation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 27) terminating Chen Dah Machinery Ltd. (Chen Dah), as a respondent to the above-captioned investigation.

Authority.

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On March 2, 1983, the Commission instituted investigation No. 337–TA–137 to determine whether there is a violation of section 337 in the unauthorized importation and sale of certain heavy-duty staple gun tackers by virtue of alleged common law trademark infringement, false designation of origin, and passing off. 48 FR 8875. On September 20, 1983, complainant Arrow Fastener Corp., Inc. (Arrow) filed a motion (Motion No. 137–24) to terminate the Chen Dah as a respondent to this investigation. The basis of Arrow's motion was that Arrow did not introduce any evidence and did not make a case against Chen Dah at the evidentiary hearing before the presiding officer. The motion was unopposed. On October 18, 1983, the presiding officer, finding that Chen Dah had not violated section 337, granted the motion (Order No. 27). No petitions for review or agency comments were received in connection with Order No. 27.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

Issued: November 10, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30912 Filed 11–15–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–137]

Certain Heavy-Duty Staple Gun Tackers; Commission Decision Not To Review Initial Determination Terminating 14 Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (Order No. 25) granting a joint motion (Motion No. 137–19) to terminate the following respondents as parties to the above-captioned investigation on the basis of a settlement agreement: Test-Rite Products Corp.; Test-Rite International (Taiwan) Ltd.; Test-Rite Automotive Ltd.; Menard, Inc.; Dart Drug Corp.; ACO, Inc.; Wal-Mart Stores, Inc.; Waverly Screw & Hardware, Inc.; Pep Boys-Manny, Moe and Jack of California; TSC Industries, Inc.; Venture Stores, Inc.; The Handyman of California, Inc.; Quality Master Co., Ltd.; and Upmaster (collectively "the Test-Rite respondents").

Authority

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h).

SUPPLEMENTARY INFORMATION: On March 2, 1983, the Commission instituted investigation No. 337–TA–137 to determine whether there is a violation of section 337 in the unauthorized importation and sale of certain heavy-duty staple gun tackers by virtue of alleged common law trademark infringement, false designation of origin, and passing off. 48 FR 8875. On August 19, 1983, complainant Arrow Fastener Corp., Inc. (Arrow) and the Test-Rite respondents filed a joint motion (Motion No. 137–19) to terminate the Test-Rite respondents as parties to this investigation on the basis of a settlement agreement. Arrow and the Test-Rite respondents filed an amendment to the agreement on September 9, 1983 (Re-motion No. 137–19). The presiding officer issued an initial determination (Order No. 25) granting Motion No. 137.19 on October 12, 1983. A notice seeking comments on the proposed termination of Test-Rite was published in the **Federal Register** of October 18, 1983 (48 FR 48300). No petitions for review or agency or public comments were received.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

Issued: November 10, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30910 Filed 11–15–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–155]

Certain Liquid Crystal Display Watches With Rocker Switches; Commission Decision Not To Review Initial Determination Adding Two Alleged Unfair Acts to Scope of Investigation

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) (Order No. 3) amending the complaint and notice of investigation to add allegations of two additional unfair acts, viz, the alleged infringement by respondents of U.S. Design Patent No. 269,951 and U.S. Design Patent 269,767. Accordingly, the

I.D. has become the Commission's determination as to this matter.

Authority

19 U.S.C. 1337; 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53 (c) and (h).

SUPPLEMENTARY INFORMATION: The Commission has received neither a petition for review of the I.D. nor comments from the public or other Government agencies.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Commission, telephone 202–523–0499.

Issued: November 8, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30911 Filed 11–15–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–155]

Certain Liquid Crystal Display Watches With Rocker Switches; Commission Decision Not To Review Initial Determination Adding Two Respondents

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) (Order No. 2) amending the complaint and notice of investigation to add two new respondents, Cycle Time Electronics, Ltd., and Far East United Electronics, Ltd. Accordingly, the I.D. has become the Commission's determination as to this matter.

Authority

19 U.S.C. 1337; 47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 10 CFR 210.53 (c) and (h).

SUPPLEMENTARY INFORMATION: The Commission has received neither a petition for review of the I.D. nor comments from the public or other Government agencies.

The Commission notes its disagreement with the presiding officer's statement in Order No. 2 that the Commission "has held repeatedly that whether a proposed respondent has enough time to prepare for trial is of no consequence in determining whether it should be added as a respondent during the course of the investigation."

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Commission, telephone 202–523–0499.

Issued: November 7, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30906 Filed 11–15–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–145 (Preliminary)]

Certain Steel Valves and Certain Parts Thereof From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that industries in the United States are materially injured by reason of imports from Japan of steel wedge gate globe and swing check valves and certain parts thereof [2] (other than bellows seal valves and non-machine valve bodies), provided for in item 680.17 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 22, 1983, counsel for the Valve Manufactures Association Fair Trade Council and 11 U.S. producers filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is materially injured, by reason of imports from Japan of certain steel valves and certain parts thereof which are allegedly being sold at LTFV. Accordingly, effective September 22, 1983, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Act (19 U.S.C. 1673b(a)).

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on October 4, 1983 (48 FR 45319). The conference was held in Washington, D.C. on October 17, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on November 7, 1983. A public version of the Commission's report, *Certain Steel Valves from Japan* (investigation No. 731–TA–145 (Preliminary), USITC Publication 1446, 1983), contains the views of the Commission and information developed during the investigation.

Issued: November 7, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30909 Filed 11–15–83; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] The term "certain parts" means "partially completed" valves. "Partially completed" valves, in turn, are machined forged or cast valve bodies imported alone or together with one or more of the following parts: bonnet, stem, wedge, handle, and seat rings. Excluded from the definition are "rough", i.e., non-machined valve bodies, the above designated parts imported alone, and miscellaneous minor parts such as fasteners.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-164A)]

Railroad Service Abandonment; Burlington Northern Railroad Co.; Abandonment and Discontinuance of Trackage Rights Over Chicago and North Western Railway Company in Whiteside County, IL; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 7.52 mile rail line between Lyndon and Agnew (milepost 28.35 to milepost 35.87) and to discontinuance its trackage rights over the Chicago and North Western Railway Company from Agnew to Sterling, a distance of 4.90 miles in Whiteside County, IL. The abandonment certificate will become effective 30 days after this publication unless has Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later then 20 days from publication of this Notice. The following notation shall be typed in boldface on the lower left-hand corner of the envelop containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade withing this 10 day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-30864 Filed 11-15-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30301]

Everett Railroad Co.; Exemption in Bedford County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by Everett Railroad Company, of 3.64 miles of railroad extending from Mt. Dallas to Tatesville in Beford County, PA.

DATES: This decision will be effective on December 16, 1983. Petitions for reconsideration must be filed by December 6, 1983. Petitions to stay the decision must be filed by November 28, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30301 to:

(1) Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Alan W. Maples, West Third Street, Everett, PA 15537

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained on the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 7, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre would delete the requirement that the Commission be notified of consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-30863 Filed 11-15-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-71X)]

Railroad Services Abondonment; Southern Pacific Transportation Co.; La Fourche Parish, LA; Exemption

Southern Pacific Transportation Company (SP) has filed a notice of exemption for an abandoment under 49 CFR 1152 Subpart F— *Exempt Abandonments.* The line to be abandoned is SP's Thibodaux Branch in La Fourche Parish, LA, between milepost 3.20 and the end of the branch, a distance of approximately 1.06 miles.

SP has certified: (1) That no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Louisiana has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on December 16, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 28, 1983, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 6, 1983, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to SP's representative: G.A. Laakso, One Market Plaza, Southern Pacific Building, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 6, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-30865 Filed 11-15-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Attorney General's Task Force on Family Violence; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776, 5 U.S.C. App. I, Supp. II), and with the concurrence of the General Services Administration, the Attorney General has determined that establishment of the Attorney General's Task Force on Family Violence is in the public interest in connection with the performance of duties imposed on the Department of Justice by law.

The Task Force is being established to make recommendations to the Attorney General to address the serious national problem of violence within the family. Specifically, the task Force is charged to examine, and develop recommendations in, the following areas; the nature of violence within the family and the current response to it—particularly focusing on violence against children, spouse abuse, and mistreatment of the elderly; national, state and local efforts to address the problem of family violence whether based in government agency or in the public or private sector; the integration of government and other community resources to assist these victims; and appropriate roles for the Department of Justice, and other Federal agencies, in addressing family violence and improving the response to and the treatment of its victims.

The Task Force will consist of nine members from public and private life covering a wide range of expertise in fields related to law enforcement and family violence. Members will be appointed by the Attorney General.

The Committee will function solely as an advisory body in full compliance with the provisions of the Federal Advisory Committee act. Its charter will be filed under the Act fifteen days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of the Task Force and its areas of concern to the Liasion Officer, Attorney General's Task Force on Family Violence, U.S. Department of Justice, 633 Indiana Avenue, N.W. Room 1242, Washington, D.C. 20531, phone: 202/724-7782.

William French Smith,

Attorney General.

[FR Doc. 83-31063 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-18-M

Attorney General's Task Force on Family Violence; Public Hearings

ACTION: Notice of Public Hearings.

SUMMARY: Notice is hereby given that the Attorney General's Task Force on Family Violence will hold six public hearings on the issue of family violence. The Task Force, which was announced by the Attorney General on September 19, 1983, consists of nine members from the public and private sector covering a wide range of expertise in fields related to law enforcement and family violence.

The Task Force will function solely as an advisory body in full compliance with the provisions of the Federal Advisory Committee Act.

The Task Force will make recommendations to the Attorney General for addressing the national problem of violence within the family. Specifically, the Task Force will examine the issues and develop recommendations in the following areas: The nature of violence within the family and the current responses to it; violence and molestation against children, spouse abuse, and mistreatment of the elderly; national, state, and local efforts, whether based in a government agency or in the private sector to address the problem of family violence; the integration of government and other community resources to assist thes evictims; and appropriate roles for the Department of Justice, and other Federal agencies, in addressing family violence and improving the response to and the treatment of its victims.

Oral and written testimony will be solicited from the public. The testimony will be used as a basis for making recommendations to the Attorney General.

Location/Dates:

December 1–2, 1983:

U.S. Court of International Trade, 1 Federal Plaza, Ceremonial Courtroom, New York, New York, Seats Available to Public: 125

For further information contact: Mr. William Modzeleski at 202/276–6500

December 14–15, 1983:

For further information contact: Mr. William Modzeleski at 202/276–6500

December 14–15, 1983:

Wayne State University Building, 6001 Cass Street, Detroit, Michigan, Seats Available to Public: 125

For further information contact: David O'Connor at 202/276–6500

January 11–12, 1984:

Jackson County Courthouse, 2nd Floor, Assembly Area, 415 E. 12th Street, Kansas City, Missouri, Seats Available to Public: 125

For further information contact: Susan Hay at 202/276–6500

January 18–19, 1984:

King County Council Chambers, Room 402, King County Courthouse, 3rd & James Street, Seattle, Washington, Seats Available to Public: 125

For further information contact: Virginia Bell at 202/276–6500

February 1–2, 1984:

The Institute of Texan Cultures, 801 S. Bowie Street at Durango Blvd., San Antonio, Texas, Seats Available to Public: 125

For further information contact: William Modzeleski at 202/276–6500

February 15–16–17, 1984:

Court of Appeals (Tentative location), Third Appellate Dis. 914 Capitol Mall, 119 Liberty & Courts Bldg., Sacramento, California, Seats Available to Public: 125

For further information contact: David O'Connor at 202/276–6500.

Procedure: The Task Force on Family Violence invites all interested parties to submit written testimony or program information regarding any, or all, aspects of family violence. Persons interested in submitting written testimony should forward it to: The Attorney General's Task Force on Family Violence, 633 Indiana Avenue, N.W., Washington, D.C. 20531. If possible, all written testimony should be typed double spaced and submitted in duplicate. Persons interested in providing oral testimony at a hearing should notify: The Attorney General's Task Force on Family Violence, 633 Indiana Ave., N.W., Washington, D.C. 20531, as soon as possible and in no event not later than 14 days prior to the date of the relevant hearing. The Task Force on Family Violence will make the final determinations as to what persons/organizations will make oral presentations.

Conduct of Hearings: The hearings which will be open to the public will begin at 9:00 a.m. Chief William Hart, Chairman of the Task Force on Family Violence, or his designee , will preside at the hearings. The other members of the Task Force will join Mr. Hart. This will not be a judicial or evidentiary-type hearing and there will not be any cross examination. However, clarifying questions or discussion may follow each presentation.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding official.

A transcript of the hearings will be made. The entire record of the hearings, including transcript, will be retained by the Task Force on Family Violence, and will be available to the public. Any person may purchase a copy of the transcript from the reporter.

For further information contact: Marise Rene Duff, Executive Director, Attorney General's Task Force on Family Violence, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Dated: November 14, 1983.

Marise Rene Duff,

Executive Director, Attorney General's Task Force, on Family Violence.

[FR Doc. 83-31030 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-18-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 26, 1983 a proposed consent decreee in *United States* v. *Public Service Company of New Mexico, Inc.,* Civil Action Number 83–1635–JB, was lodged with the United States District Court for the District of New Mexico. The proposed decree requires Public Service Company of New Mexico to comply with its National Pollutant Discharge Elimination System permit at its San Juan Station and to pay a penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Public Service Company of New Mexico, Inc.,* D.J. Ref. 90–5–1–1–1981.

The proposed consent decree may be examined at the office of the United States Attorney, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103, and at the Region VI office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht, II,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-30834 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated May 4, 1983, and published in the **Federal Register** on May 12, 1983 (48 FR 21393), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00780, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class controlled substances listed above is granted.

Dated: November 7, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 83-30848 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

National Advisory Committee for Juvenile Justice; Meeting

The twenty-ninth quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention will be held in New Orleans, Louisiana on December 9, 1983.

The meeting will be held at the Fairmont Hotel, University Place, New Orleans, beginning at 9:00 a.m. and concluding no later than 5:00 p.m., December 9. The public is welcome to attend.

The agenda will include discussion and topics related to the redirection of the Federal effort in juvenile justice.

For further information contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531, 202-724-7655.

Dated: November 10, 1983.

Approved:

Alfred S. Regnery,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 83-30830 Filed 11-15-83; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: NRC Form 2—Application for Source Material License.

3. The form number if applicable: NRC Form 2.

4. How often the collection is required: When applying for a specific license to possess and use source material.

5. Who will be required or asked to report: Persons desiring a specific license to possess and use source material.

6. An estimate of the number of responses: 15.

7. An estimate of the total number of hours needed to complete the requirement or request: 120.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC Form 2 is required to be submitted by persons wishing to obtain a specific license to possess and use source material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 9th day of November 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-30846 Filed 11-15-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-157]

Cornell University; Renewal of Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. R-80 to the Cornell University (the licensee) that renews the license for operation of the TRIGA reactor (the facility) located on the campus of Cornell University in Ithaca, New York. The facility is a research reactor that has been operating at steady state power levels not in excess of 100 kilowatts (thermal).

The amendment extends the duration of Facility License No. R-80 for twenty years from the date of issuance of this amendment. The amendment also authorizes a power increase from 100 to 500 kilowatts thermal.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Thcse findings are set forth in the license amendment. Notice of the proposed license renewal was published in the **Federal Register** on November 25, 1980 at 45 FR 78315. Notice of the proposed power increase was published August 18, 1983 at 48 FR 37550. No requests for a hearing or petitions for leave to intervene were filed following the notices of these proposed actions.

The Commission has prepared an environmental impact appraisal for the renewal of the Facility Operating License and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated May 27, 1980, as supplemented, (2) Amendment No. 8 to License R-80, and (3) the Commission's related Safety Evaluation Report (NUREG-0984) and Environmental Impact Appraisal. These items are available for public inspection at the

Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

The Safety Evaluation Report (Document No. NUREG–0984) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 9th day of November 1983.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 83–30842 Filed 11–15–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–331]

Iowa Electric Light and Power Company; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to Iowa Electric Light and Power Company (the licensee), for the operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The amendment proposed by the licensee would revise the operating license and the provisions in the Technical Specifications relating to changes to permit reactor operation at power levels up to 50% of rated thermal power with one recirculation loop out of service. Presently, DAEC operating license requires a unit to be in cold shutdown within the succeeding 24 hours if an idle recirculation loop cannot be returned to service within 24 hours. The change proposed by the licensee would delete this license condition and modify the Technical Specifications (TSs) as necessary to provide for appropriate Average Power Range Monitor (APRM) flux scram trip and rod block settings, an increase in the safety limit Minimum Critical Power Ratio (MCPR) value and revisions to the allowable Average Planar Linear Heat Generation Rate (APLHGR) values suitable for use with an idle recirculation loop, in accordance with the licensee's application for amendment dated June 24, 1983.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 16, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition would specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the conditions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 377 and the following message addressed to Domenic B. Vassallo: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and Jack Newman, Esquire, Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 24, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and the Cedar Rapids Library, 426, Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland this 8th day of November, 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Cheif, Operating Reactors Branch #2, Division of Licensing.

[FR Doc. 83-30843 Filed 11-15-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power & Light Co., and Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-14, issued to Pennsylvania Power & Light Co., and Allegheny Electric Cooperative, Inc. (the licensees), for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania.

The amendment would change Technical Specification Table 4.8.1.1.2-2 to modify the start time sequence of two Emergency Service Water (ESW) pumps from 53 and 57 seconds to 44 and 48 seconds, respectively, in accordance with the licensee's application for an amendment dated October 20, 1983, as modified by licensee letter dated November 7, 1983. The change is proposed to support two unit operation and prevent the potential concurrent starts of the Residual Heat Removal (RHR) or Core Spray (CS) pumps with the ESW pumps due to incorporation of the low vessel pressure interlocks required on the RHR and CS pump initiation signals in order to prevent a LOCA—false LOCA condition during two unit operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee in his letter of October 20, 1983, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee has re-evaluated the two unit diesel generator load sequence study and the two unit offsite power supply voltage study and stated that the studies are not affected by the proposed change. The ESW pump start time sequence was previously changed to the current values in order to stagger start the pumps to mitigate water effects in the system. The licensee believes the effects of water hammer will be mitigated by the proposed action. The licensee stated that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because each area of potential concern has been determined to be within the constraints of previous design and safety analyses. The licensee also stated that the proposed change does not involve a significant reduction in a margin of safety because the two unit offsite power supply voltage study and the two unit diesel generator load sequence study are not adversely affected by the proposed change, water hammer loads are minimized by the proposed change, and no other margin of safety as defined in the basis for any other Technical Specification is adversely affected by the proposed change. The staff agrees with the licensee's evaluation, in this regard and, accordingly, the NRC staff proposes to find that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in delaying the startup of Unit 1 following the tie-in outage for Unit 2 and delaying the fuel load of Unit 2. Therefore the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to A. Schwencer, Chief of Licensing Branch No. 2, by collect call to (301) 492-7435 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch. All comments received by November 25, 1983, will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland this 9th day of November 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-30844 Filed 11-15-83; 8:45 am]

BILLING CODE 7590-01-M

[License No. 34-10445-01 EA No. 83-96]

Shelwell Services, Inc., Rescission of Suspension and Order Modifying License

I

Shelwell Services, Incoroprated, Route 1, Harbor Hills, Hebron, Ohio, 43025 (the licensee) is the holder of a specific byproduct material license (No. 34-10445-01) issued by the Nuclear Regulatory Commission (the Commission) pursuant to, among other regulations, 10 CFR Part 30. The license was originally issued on October 27, 1964, and was most recently renewed on June 1, 1979, with an expiration date of July 31, 1984.

II

On September 14, 1983, the Licensee advised the NRC of an incident at its facility on September 13, 1983 wherein a source had been cut into with the resultant release of cesium-137 in powder form. Subsequent investigation by the NRC Region III Office revealed that contamination had occurred onsite at the licensee's facility and at offsite locations, including residences of licensee workers. These findings resulted in the issuance to the licensee on September 20, 1983, of an Order Temporarily Suspending License, Effective Immediately, and an Order to Show Cause why the license should not be revoked. The Order was published in the **Federal Register** at 48 FR 43745 (September 26, 1983).

By a submittal dated October 17, 1983, the licensee reponded to the Order. On that date, the licensee also submitted its proposed onsite decontamination plan as required by section IV.D. of the September 20th Order. By letter dated October 25, 1983, NRC Region III approved the licensee's decontamination plan subject to several restrictions.

In its October 17th response, the licensee described the actions it had taken following the incident. The licensee stated that it had fully complied with the terms of section IV of the Order. The licensee had stopped use of its byproduct material in compliance with section IV.d.A. of the Order. All byproduct material possessed by the licensee had been returned to its Hebron, Ohio facility, and stored in compliance with 10 CFR Part 20, as required by section IV.d.B. Offsite decontamination had been accomplished in accordance with section IV.d.C. of the Order, and had been verified by NRC site officials on October 6, 1983, to be in compliance with NRC criteria.

In its October 17 submittal, the licensee also described a revised Radiation Protection Program which would aid the licensee in complying with the terms of its license. As described by the licensee, its revised program included the development of radiation safety manuals, development of a quality assurance manual for its operating procedures manual, institution of an employee training program, the purchase of additional instrumentation, and the institution of quality assurance audits to ensure that licensed activities were being carried out in accordance with its license. The licensee also stated that the incident has raised its "awareness level" as to the need to handle byproduct material in full compliance with regulatory and license requirements.

After a careful review of the licensee's October 17, 1983 response, it was determined that the licensee needed further clarification of its corrective action to assure that licensed activities will be performed safely and in accordance with regulatory requirements. Accordingly, on October 28, 1983, members of the NRC staff met with licensee representatives at NRC offices in Bethesda, Maryland. At the meeting, the licensee submitted additional information regarding its corrective action, including an amended Operating Procedures Manual, an amended outline for a Quality Assurance Manual, and a Radiological Health Training Manual. By letter dated October 28, 1983, the NRC required the licensee to provide additional information and make certain changes to its procedures before the NRC could rescind the suspension order. The licensee provided supplemental information by letter of that same date.

The proposed corrective actions provided in the licensee's submittals appear to be adequate to assure that the licensee will be able to use byproduct material in compliance with its license and NRC regulations. The licensee has shown cause why License No. 34–10445–01 should not be revoked and has shown that, subject to the implementation of the proposed improvements in its licensed program, licensed activities can be proformed under its license without undue risk to the public health and safety. Accordingly, I have determined that the public health, safety and interest requires that any continued operation be subject to the conditions set forth in section III. Therefore, I have further determined that subject to these conditions its license suspension may be rescinded.

III

In view of the foregoing and pursuant to sections 81 and 161b of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 30, it is hereby ordered that:

A. License No. 34–10445–01 is modified to include the licensee's statements, representations, and procedures as indicated in the following documents submitted to the NRC:

(1) October 17, 1983, response to the NRC's September 20, 1983, Order to Show Cause and Order Temporarily Suspending License;

(2) October 28, 1983, response to the NRC with appendixes amending the licensee's October 17, 1983, response;

(3) October 28, 1983, response to the NRC identifying operating engineers who will be certified and properly trained to handle licensed materials;

(4) October 28, 1983, response to NRC questions dated October 28, 1983; and

(5) An undated letter received on October 28, 1983 addressed to Radiosotopes Licensing Branch, Division of Fuel Cycle and Material Safety, NRC, addressing the licensee's new operating facility in Mt. Sterling, Illinois.

B. License No. 34–10445–01 is further modified to require no later than March 31, 1984 a qualified Assistant Radiation Safety Officer who is trained to the same level of competence as the Radiation Safety Officer.

IV

The licensee may request a hearing within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of any such request shall also be sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issued an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section III of this Order.

The Order modifying license set forth in section III shall become effective upon the licensee's consent or upon expiration of the time within which the licensee may request a hearing or, if a hearing is requested by the licensee, on the date specified in an Order issued following further proceedings on this Order. The suspension of licensed activities imposed by the Order of September 29, 1983 is rescinded upon the effectiveness of the Order set forth in section III.

Dated at Bethesda, Maryland this 7th day of November 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-30845 Filed 11-15-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[Policy Letter 80–9; Transmittal Memorandum No.3]

Establishment of Procurement Data Reporting Requirements to Comply with Pub. L. 96–39 (Trade Agreements Act of 1979); Policy Letter

November 9, 1983.

The purpose of this Transmittal Memorandum is to simplify the procurement data reporting requirements to comply with Pub. L. 96–39. The Office of the United States Trade Representative has determined that, with a single change, the standard data reported under the Federal Procurement Data System (FPDS) will meet the requirements of Pub. L. 96–39 for procurements with appropriated funds, thus eliminating the need to report such procurements separately on

SSF 279a. Henceforth, the SF 279a will only be used by covered agencies to report procurements made with nonappropriated funds above the specified threshold.

The General Services Administration will add a new data element to the standard FPDS reporting requirments which covers "Synopsis of Procurement Prior to Award". It will contain the following subelements:

(1) Synopsized Prior to Award
(2) Not Synopsized Due to Emergency
(3) Not Synopsized for Other Reasons

The first sentence of the sixth paragraph of this Policy Letter is changed to read as follows:

"The 'Individual Contract Report for Contracts Exceeding $150,000 for the Purchase of Supplies and Equipment' (SF 279a) shall be completed whenever a covered agency awards such a contract using nonappropriated funds".

This change is effective on October 1, 1984. Agencies, however, are strongly encouraged to implement this change on January 1, 1984 if it is possible without undue impact on systems and resources.

Concurrence

This transmittal Memorandum has been concurred in by the Director of OMB.

Donald E. Sowle,

Administrator.

[FR Doc. 83-30866 Filed 11-15-83; 8:45 am]

BILLING CODE 3110-01-M

Increased Minority Business Participation in Advertising Contracts; Rescission of OFPP Policy Letter 78-1

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Rescission of OFPP Policy Letter 78-1, Increased Minority Business Participation in Advertising Contracts.

SUMMARY:

1. Policy Letter 78-1, January 31, 1978, Increased Minority Business Participation in Advertising Contracts, cited the "national program to increase Federal Government minority business awards" and the need for "increasing awards to minority advertising agencies and other minority media organizations." The purpose of the letter has been overtaken by subsequent events discussed below. Accordingly, Policy Letter 78-1 is rescinded.

Public Law 95-507, signed on October 24, 1978, was enacted subsequent to the issuance of Policy Letter 78-1 to increase the opportunities for small and small disadvantaged businesses to obtain Federal contracts and subcontracts. Section 211 of Pub. L. 95-507 mandated that the apparent low bidder or offeror on all contracts over $500,000 ($1,000,000 in the case of construction of a public facility) submit, before award, a subcontracting plan setting forth "percentage goals for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals." The prime contractor, under the statute, must also describe the efforts it will take to assure that such firms have an "equitable opportunity" to compete for subcontracts. Additionally, Federal agencies and the Small Business Administration are required by the same statute to establish yearly goals for the participation by small and small disadvantaged businesses in procurement contracts of Federal agencies.

On December 17, 1982, President Reagan issued a Statement on Minority Business in which he set forth a goal of $15 billion for procurement from minority business concerns over the next three fiscal years. Executive Order 12432, July 14, 1983, provided guidance and oversight for the conduct of minority business development programs and reaffirmed the national commitment to greater economic opportunity for minority entrepreneurs. The importance of minority business procurement goals was again expressed in the President's statement of August 5, 1983.

Agencies awarding contracts for advertising services are reminded of the requirements of section 211 of Pub. L. 95-507, as implemented by OFPP Policy Letter 80-2, April 29, 1980 45 FR 31028; May 9, 1980. Every effort should be made to assure that small disadvantaged concerns are given the fullest opportunity to participate as subcontractors in the performance of Federal contracts for advertising services.

In this regard, representatives of the advertising agencies and OFPP officials will meet semi-annually to review progress made in such subcontracting.

Concurrence

This notice of rescission has the concurrence of the Director of the Office of Management and Budget.

Effective date: Thirty days after publication of this notice.

Donald E. Sowle,

Administrator.

[FR Doc. 83-30762 Filed 11-15-83; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Amendment of Rule 406 under the Securities Act of 1933 [17 CFR 230.406] No. 270-68.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance a proposed amendment to Rule 406 under the Securities Act of 1933 relating to confidential treatment of certain information filed with the Commission.

The proposed revision of Rule 406 updates the rule's requirements to accord with the integrated disclosure system by adopting confidential treatment provisions under the Securities Act similar in scope and procedure to those under the Securities Exchange Act of 1934.

Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30820 Filed 11-15-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23109; 70-6918]

Alabama Power Co., et al.; Proposed Issuance of First Mortgage Bonds for Sinking Fund Purposes

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308 and Gulf Power Company ("Gulf"), 75 North Place Boulevard, Pensacola, Florida 32520 ("Companies"), public-utility subsidiaries of The Southern Company, a registered holding company, have filed a declaration with this Commission pursuant of Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Alabama, Georgia, and Gulf propose to issue (i.e., obtain the authentication and delivery thereof by the respective trustees to the respective Companies) their first mortgage bonds and to surrender such bonds to the trustee under the Indenture of the respective

Companies to satisfy, in whole or in part, the sinking fund (improvement fund in the case of Alabama) requirements provided for in their Indentures to be satisfied on or prior to June 1, 1984. Said Indentures provide for annual sinking fund (improvement fund) payments in an amount equal to 1% of the principal amount of bonds authenticated under the respective Indenture prior to the preceding January 1 (less bonds retired directly or indirectly as a result of the release of property and less bonds authenticated to refund other bonds). Payment may be made in cash or in principal amount of bonds authenticated under the Indenture. The maximum amounts of bonds proposed to be issued to satisfy said obigations for 1984 are as follows: Alabama—$24,261,000, Georgia—$33,757,000, and Gulf—$4,392,000. The bonds will be issued on the basis of unfunded net property additions.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 6, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30827 Filed 11-15-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23106; 70-6811]

Associated Natural Gas Co., Proposal To Issue and Sell Unsecured Short-Term Notes

Associated Natural Gas Company ("Associated"); 405 West Park Street; Blytheville, Arkansas 72315, a gas utility subsidiary of Arkansas Power & Light Company, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

By order dated December 15, 1982 (HCAR No. 22780), Associated was authorized to make unsecured short-term borrowings from Farmers Bank & Trust Co., Blytheville, Arkansas ("Bank"), from time to time beginning December 15, 1982 and continuing for one year thereafter, in an aggregate principal amount not to exceed $3 million at any one time outstanding.

Associated now proposes to effect a similar transaction commencing on the effective date of this amended application-declaration ("Effective Date"). To effect such borrowings, Associated proposes to issue and sell to the Bank its unsecured promissory notes ("Notes") payable not more than 270 days from the date of issuance and which may be renewed from time to time but to mature not later than one year from the Effective Date. The Notes will bear interest, payable monthly and at maturity, on the unpaid principal amount thereof at a rate per annum equal to the prime commercial loan rate (11% as of October 28, 1983) of The Chase Manhattan Bank (N.A.), New York, New York, from time to time in effect, with adjustments to be made effective on the first business day of the month next following the month in which any change in such rate occurs. Such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. The Notes will, at the option of Associated, be prepayable in whole or in part, at any time without premium or penalty. Associated will not be required to maintain compensating balances with the Bank or to pay any commitment fees based upon the unused portion of its line of credit with the Bank.

The proceeds to be received from the issuance and sale of the Notes will be used by Associated to meet its working capital requirements, for the payment, in part, of construction expenditures and for other corporate purposes. Associated currently intends to repay the $3 million of borrowings proposed herein from the proceeds of permanent financing or with funds that might otherwise become available to Associated.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 2, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declared at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30828 Filed 11-15-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20358; File No. SR-NYSE-83-54]

Self-Regulatory Organizations; Proposed Rules Changes by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1983, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rules changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rules Changes

The proposed rules changes consist of a change to Section 313.00 of the New York Stock Exchange Listed Company Manual and to the Supplementary Material to Rule 499 as set forth at paragraph 2499.20, sub-paragraph 13 of the Exchange Rules, modifying the Exchange policy as it relates to the listing of non-voting Common Stock and the de-listing of corporations issuing such stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of basis for and the proposed rules changes

and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory, Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

The Exchange has historically refused to list non-voting Common Stock where the creation and issuance of such stock would have the effect of disenfranchising new shareholders by permanently vesting control of the corporation in certain incumbents. Within this context, any internally generated action restricting the public nature of the corporation would be objectionable.

The purpose of the proposed rules changes is to modify current Exchange policy to permit the listing of non-voting Common Stock of quasi-governmental corporations where it is only due to externally generated mandates, legislative or judicial, that the issuance of voting stock to the public is restricted. The Exchange recognizes that situations have arisen where Congress has created unique structures for quasi-governmental corporations which have had the effect of restricting or limiting the control of such corporations.[1] Within this context, the issuance of non-voting Common Stock preserves Congress' intention to limit voting and, at the same time, offers both the corporation and the investing public an opportunity to invest in such entity. It is to the benefit of quasi-governmental corporations and their investors that they be afforded the opportunity to have their publicly traded securities listed on the New York Stock Exchange.

The statutory basis for the proposed rules changes is Section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act").

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] One such instance pertains to the Student Loan Marketing Association that is legislatively restricted from issuing voting common stock to the public.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rules Changes Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rules changes.

III. Date of Effectiveness of the Proposed Rules Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rules changes or

(B) Institute proceedings to determine whether the proposed rules changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communication relating to the proposed rules changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: November 8, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30821 Filed 11-15-83; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

McLean Industries, Inc.
Common Stock, $1 Par Value (File No. 7-7204)
NI Industries, Inc.
Common Stock, $.50 Par Value (File No. 7-7205)
Circus Circus Enterprises
Common Stock, $.10 Par Value (File No. 7-7206)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 1, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-30822 Filed 11-15-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Notice No. 83-18]

Update of 1977 Study on No-Fault Insurance; Request for Comment

AGENCY: Transportation.

ACTION: Request for public comment.

SUMMARY: In 1977, DOT prepared a report on the experiences of the States with no-fault automobile insurance from

1971–77. We are now updating that study. Public comment is invited.

DATES: To be considered, comments must be received by December 16, 1983.

ADDRESS: Send comments to George F. Wiggers, Office of Economics, P–38, Department of Transportation, Washington, D.C. 20590. Comments received will be available for public inspection and copying in Room 10309, Department of Transportation Building, 400 Seventh Street, SW, Washington, D.C., from 9:00 a.m. to 5:30 p.m. eastern time, Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: George F. Wiggers, (202) 426–4203.

SUPPLEMENTARY INFORMATION: DOT has been requested by Rep. James J. Florio, Chairman of the Subcommittee on Commerce, Transportation, and Tourism of the Committee on Energy and Commerce of the House of Representatives, to update our 1977 report entitled "State No-Fault Automobile Insurance Experience 1971–77", which examined the experiences of several States that had passed no-fault automobile insurance laws by 1977. The full impact of no-fault insurance had not manifested itself in the short time between 1971 and 1977 and the insurance industry had not gained long-term experience in settling claims during that period. Consequently, data were only partially available for some aspects of no-fault insurance covered in the 1977 report. Since 1977 other States have passed no-fault laws and several of the no-fault laws that were reviewed in the 1977 study have been modified.

The purpose of this update study is to review available information regarding the experiences of the States with their no-fault automobile insurance laws since the 1977 study. This information may be used to assess the need for national standards for State no-fault automobile accident insurance laws. In preparing this update, DOT will be consulting with the States, insurance industry, consumer groups, and others who may have an interest in no-fault insurance. We invite anyone who has relevant information to make it available for the study. Specifically, we would like information on:

- The concerns which prompted the States to amend their no-fault laws since the last DOT study. It would be particularly valuable to know the concerns that prompted changes such as the switch in Florida and New York from a lawsuit threshold based upon a specified dollar cost of personal injury (a "monetary" threshold) to one based upon specified types of personal injury (a "verbal" threshold). Information on the rationale underlying such variations as well as their impact and performance would also be useful.
- The effectiveness and efficiency of State no-fault laws, including how premium costs have changed in each no-fault State, both relative to each other and relative to changes in fault States. Also desired is information on the portion of each premium dollar going to compensate accident victims in each no-fault or fault State as compared to the portion going for legal, administrative, and residual liability costs.
- The effects of each no-fault State's lawsuit threshold on the volume of automobile negligence litigation. Also desired are information pertaining to loss ratios for insurers who write policies in no-fault States and data about coordination and levels of benefits as they relate to premium cost and to the overall efficiency of the automobile insurance system.

This listing is not meant to be exhaustive. Please feel free to contribute information and views on other aspects of no-fault insurance.

Since we intend to place all comments in a public file, persons who wish to submit information believed confidential should contact Mr. Wiggers before submitting the information. If we agree that the information deserves confidential treatment, we will need two copies of the information: one will be complete, including the portion believed confidential; the other will have the confidential portion removed. This second copy alone will be place in the public file. In determining whether the information is to be treated as confidential, we will use the standards developed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Issued: in Washington, D.C. on November 10, 1983.

Richard F. Walsh,

Director, Office of Economics.

[FR Doc. 83–30887 Filed 11–15–83; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions; E. I. du Pont de Nemours and Co., Inc., et al.

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October 1983. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2326–X	DOT–E 2326	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.	To authorize 25 pounds or less of pyrocore powders, classed as a Class A explosive, to be packaged in DOT Specification 12H fiberboard boxes. (Mode 1.)
2582–X	DOT–E 2582	Matheson Gas Products, Secaucus, NJ	49 CFR 173.3, Part 173, Subparts D, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582–X	DOT–E 2582	Ozark-Mahoning Company, Tulsa, OK	49 CFR 173.32, Part 173, Subparts D, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2582–X	DOT–E 2582	Union Carbide Corporation, Danbury, CT	49 CFR 173.3, Part 173, Subparts D, F, G.	To authorize shipment of certain hazardous materials in cylinders made in compliance with DOT Specification 3E1800, with certain exceptions. (Modes 1, 2, 3, 4.)
2709–X	DOT–E 2709	U.S. Department of Defense, Washington DC.	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize an addditional Class A explosive for shipment in DOT Specification 6D drum with a 2S polyethylene liner. (Mode 1.)
3051–X	DOT–E 3051	Liquid Air Corporation, Burr Ridge, IL	49 CFR 173.302(a), 175.3	To authorize shipment of nitrogen and oxygen, in non-DOT specification stainless steel cylinders. (Modes 1, 2, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3302-X	DOT-E 3302	Liquid Air Corporation, Burr Ridge, IL	49 CFR 173.302, 175.3	To authorize use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases. (Modes 1, 2, 3, 4.)
4291-X	DOT-E 4291	Pacific Engineering & Production Company of Nevada, Henderson, NV.	49 CFR 173.239a(a)(2)	To authorize use of non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1, 2.)
5716-X	DOT-E 5716	Virginia Chemicals, Incorporated, Portsmouth, VA.	49 CFR 173.314, 179.3, 179.300-18(a)(1), 179.300-19(d).	To authorize use of non-DOT specification tank car tanks, for shipment of a certain nonflammable gas. (Modes 1, 2.)
6536-X	DOT-E 6536	Utility Propane Company, Elizabeth, NJ	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable and nonflammable gases. (Mode 1.)
6538-P	DOT-E 6538	Intourgas S. R. L., Milano, Italy	49 CFR 173.304(d)(3)(ii), 178.33	To become a party to Exemption 6538. (Modes 1, 3.)
6538-P	DOT-E 6538	Uniflame S. R. L., Milano, Italy	49 CFR 173.304(d)(3)(ii), 178.33	To become a party to Exemption 6538. (Modes, 1, 3.)
6543-P	DOT-E 6543	Texas Instruments Incoorporated, Dallas, TX.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247, 175.3.	To become a party to Exemption 6543. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Synthatron Corporation, Parsippany, NJ	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.247, 175.3.	To authorize various corrosive materials, as additional commodities. (Modes 1, 2, 3, 4.)
6816-X	DOT-E 6816	McDonnell Douglas Astronautics Company, Saint Louis, MO.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Mode 1.)
6902-X	DOT-E 6902	Synthatron Corporation, Parsippany, NJ	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
7052-P	DOT-E 7052	Bird Electronic Corporation, Solon, OH	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7482-X	DOT-E 7482	Monsanto Company, Saint Louis, MO	49 CFR 173.245b(a)(6)	To authorize use of reconditioned non-DOT specification blow-molded high molecular weight ploye thylene drum, for shipment of certain corrosive solid waste materials. (Mode 1.)
7607-X	DOT-E 7607	Foxboro Analytical, South Norwalk, CT	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7682-X	DOT-E 7682	Born Free Plastics, Inc., Houston, TX	49 CFR 173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.257(a)(1), 173.263(a)(28), 173.265(d)(6), 173.272(i)(9), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1), 178.19.	To authorize manufacture, marking and sale of non-DOT specification reusable molded polyethylene containers, for transportation of corrosive liquids. (Modes 1, 2, 3.)
8195-X	DOT-E 8195	McDonnell Douglas Corporation, Saint Louis, MO.	49 CFR 173.6(b)(3), 175.3, Part 173, Subpart D, F, H.	To authorize use of non-DOT specification metal drums as outside containers in lieu of prescribed DOT specification fiberboard or wood containers, for shipments of flammable liquids, corrosive materials, and Class B poisons subject to 49 CFR 173.6(b)(3). (Modes 1, 2, 4, 5.)
8214-X	DOT-E 8214	Thiokol Corporation, Ogden, UT	49 CFR 173.153, 173.154, 175.3	To authorize transportation of inflators and modules for passive restraint systems for use in automobiles as flammable solids, n.o.s. (Modes 1, 2, 3, 4.)
8244-X	DOT-E 8244	Halliburton Services, Incorporated, Duncan, OK.	49 CFR 173.119, 173.125, 173.245, 173.263, 173.264, 173.289, 46 CFR 54.9.	To authorize use of a DOT specification marine portable tank for shipment of certain flammable liquids, corrosive materials and combustible liquids. (Modes 1, 3.)
8249-X	DOT-E 8249	LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize increase in weight limitations for poison (solid) package from 5 pounds to 6¼ pounds and from 20 pounds per 4 pack to 25 pounds. (Modes 1, 2, 4.)
8278-X	DOT-E 8278	Maintenance- Mechanical Corporation, Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for shipment of flammable gases and flammable liquids. (Mode 1.)
8286-X	DOT-E 8286	Union Carbide Corporation, Danbury, CT	49 CFR 172.101, 173.315, 176.76(b)	To authorize use of non-DOT specification vacuum insulated cargo tanks, for shipment of certain nonflammable gases. (Mode 3.)
8287-X	DOT-E 8287	Rohm & Haas Company, Philadelphia, PA.	49 CFR 173.245(a)(16), 173.245(a)(26), 178.19-4(c), 178.35a-2(b).	To authorize shipment of a corrosive liquid in a DOT Specification 6D/2SL or DOT Specification 34 equipped with a bung vent, or in a DOT Specification 12B fiberboard box with no more than four inside polythylene bottles with vented closures. (Modes 1, 2, 3.)
8307-X	DOT-E 8307	U.S. Department of Energy, Washington, DC.	49 CFR 173.21, 173.247, 173.25(b), 173.305(a), 175.3.	To renew and to provide for shipment of smoke generators no longar charged with nitrogen. (Modes 1, 2, 3, 4.)
8344-X	DOT-E 8344	Western-Hoegee Company, Glendale, CA.	49 CFR 173.197a	To authorize transport of smokeless powder for small arms in a DOT Specification 12B fiberboard box. (Mode 1.)
8344-X	DOT-E 8344	All-Sports Supply, Inc., Portland, OR	49 CFR 173.197a	To authorize transport of smokeless powder for small arms in a DOT Specification 12B fiberboard box. (Mode 1.)
8567-X	DOT-E 8567	Georgia Equipment Manufacturing, Inc., Newnan, GA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable, corrosive waste liquids or semi-solids. (Mode 1.)
8640-X	DOT-E 8640	Fruehauf Corporation, Omaha, NE	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of certain hazardous materials. (Mode 1.)
8678-X	DOT-E 8678	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of non-DOT Specification IMO Type 5 portable tank, for shipment of flammable and nonflammable gases. (Modes 1, 2, 3.)
8678-X	DOT-E 8678	Eurotainer S.A. Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT Specification IMO Type 5 portable tank, for shipment of flammable and nonflammable gases. (Modes 1, 2, 3.)
8698-X	DOT-E 8698	Union Carbide Corporation, Danbury, CT	49 CFR 172.101	To authorize manufacture, marking and sale of non-DOT specification portable tanks, for transportation of non-pressurized liquid nitrogen. (Mode 3.)
8706-X	DOT-E 8706	Prairie State Equipment, Inc., Sioux Falls, SD.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/MC-312 except for bottom outlet valve variations, for transportation of flammable, corrosive waste liquids or semi-solids. (Mode 1.)
8709-X	DOT-E 8709	Delta Drum, Inc., Crete, IL	49 CFR 178.19, Part 173, Subparts D, F	To authorize manufacture, marking and sale of non-DOT specification 55-gallon reusable, blowmolded, polyethylene drum, for shipment of certain corrosive liquids and oxidizers. (Modes 1, 2, 3.)
8735-X	DOT-E 8735	Letica Corporation, Rochester, MI	49 CFR 178.19, Part 173, Subpart F	To authorize manufacture, marking and sale of non-DOT specification removable head polyethylene drum, for shipment of corrosive liquids. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8750–X	DOT–E 8750	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302(a) 175.3	To authorize manufacture, marking and sale of non-DOT specification girth welded steel cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 4.)
8970–X	DOT–E 8970	Williams Strategic Metals, Inc., Wheat Ridge, CO.	49 CFR 173.368	To authorize an optional all 304 stainless steel container and to add highway as additional mode of transportation. (Modes 1, 2.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9003–N	DOT–E 9003	General Electric Company, San Jose, CA.	49 CFR 173.206, 178.245	To authorize a one-time shipment of a flammable solid for disposal, in non-DOT specification steel portable tanks. (Mode 1.)
9016–N	DOT–E 9016	Van Leer Verpackungen GmbH, Hamburg, West Germany.	49 CFR 173.127, 173.175, 173.184, 178.224.	To authorize manufacture, marking and sale of a non-DOT specification fiber drum not to exceed 110 liter capacity, for shipment of certain flammable liquids and flammable solids. (Modes 1, 2, 3.)
9027–N	DOT–E 9027	McGean-Rohco, Inc., Cleveland, OH	49 CFR 178.131	To authorize a one-time reuse of DOT Specification 37A (single-trip) drums, for shipment of chromic acid, solid and chromic acid mixture, classed as an oxidizer. (Modes 1, 2.)
9073–N	DOT–E 9073	Natico, Inc., Chicago, IL	49 CFR 178.116–6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 gauge, 55-gallon capacity, DOT–17E steel drums. (modes 1, 2.)
9082–N	DOT–E 9082	Union Carbide Corporation Danbury, CT	49 CFR 173.365(a)	To authorize shipment of a carbamate pesticide in collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2200 pounds each. (Modes 1, 3.)
9095–N	DOT–E 9095	Worthington Cylinders, Columbus, OH	49 CFR 173.302, 173.34(e)(10), 173.34(e)(9), Part 173, Appendix B.	To authorize shipment of a nonliquefied flammable gas, in a DOT Specification 4E240 aluminum cylinder. (Mode 1.)
9116–N	DOT–E 9116	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173 Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationaly molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3.)
9121–N	DOT–E 9121	Morton Thiokol, Incorporated, Elkton, MD.	49 CFR 172.101–6(b)	To authorize shipment of one rocket motor having gross weight in excess of that specified in 49 CFR 172.101. (Mode 4.)
9124–N	DOT–E 9124	Waste Management of Wisconsin, Inc., Menomonee Falls., WI.	49 CFR 173.364	To authorize shipment of compacted exhaust ductwork, piping and hoods contaminated with a solid, chromic acid residue in non-DOT specification aluminum dump truck. (Mode 1.)
9132–N	DOT–E 9132	Welchem, Inc., Houston, TX	49 CFR 173.119, 173.245, 178.253	To authorize use of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
9140–N	DOT–E 9140	Crown Rotational Molded Products, Inc., Marked Tree, AR.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173 Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2.)
9141–N	DOT–E 9141	Bristol Flare Corporation, Bristol, PA	49 CFR 172.101, 173.108	To ship certain hand signal devices, as a flammable solid instead of a class C explosive. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8336–X	DOT–E 8336	Cities Service Company, Tulsa, OK	49 CFR 173.315(a)(1), 173.315(c)(1)	To authorize use of an insulated DOT Specification MC–331 cargo tank, for transportation of a flammable gas. (Mode 1.)
EE 9158–N	DOT–E 9158	National Beryllia Corporation, Haskell, NJ.	49 CFR 173.365	To authorize a one-time shipment of approximately ten tons of solid waste materials contaminated with beryllium oxide, in a non-DOT specification roll-on, roll-off, bulk container. (Mode 1.)
EE 9159–N	DOT–E 9159	Oerlikon-Buehrle Zurich, Switzerland Martin Marietta, Orland, FL.	49 CFR 172.101, 173.79(a), 175.30	To authorize air transportation of rocket ammunition, rocket motors and igniters. (Mode 4.)

DENIALS

8980–N	Request by U.S. Chemical & Plastics, Canton, OH to authorize shipment of resin solutions classed as flammable liquids with a flash point of 89 degrees Fahrenheit to 95 degrees Fahrenheit in containers exceeding one gallon capacity without labeling and placarding denied October 18, 1983.
9037–N	Request by Great Lakes Chemical Corporation, West Lafayette, IN to authorize shipment of chloropicrin in non-DOT specification foreign made cylinders similar to DOT Specification 4BW, and shipment of methyl bromide mixtures in non-DOT specification foreign made cylinders denied October 24, 1983.

Issued in Washington, DC, on November 8, 1983.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83–30886 Filed 11–15–83; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Advisory Committee to the National Center for State and Local Law Enforcement Training; Meeting

The Treasury Advisory Committee on State and Local Law Enforcement Training will hold its first meeting on Tuesday and Wednesday, December 6 and 7, 1983 in Building 262, room S-9, at the Federal Law Enforcement Training Center (FLETC), Glynco, Georgia.

The purpose of the meeting will be to acquaint the Advisory Committee members with current programs being offered to the state and local law enforcement community and to obtain advice and counsel in present and future course offerings.

The agenda for December 6 includes a briefing and a tour of the FLETC facility. Also, co-chairman of the Advisory Committee and members of the FLETC staff will be introduced. There will be a presentation describing the history of the National Center and current state and local law enforcement training programs. Presentations for December 7 include the role of the Advisory Committee, programs under development, and a discussion of other committee matters.

The meeting will be open to the public. Approximately 100 seats will be available for the public and the media on a first-come first-served basis.

Interested persons may address their inquiries to Mr. John Dooher, Treasury Advisory Committee on State and Local Law Enforcement Training, Room 4211 Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226, (202) 566-2951.

Approved: November 9, 1983

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 83-30841 Filed 11-15-83; 8:45 am]

BILLING CODE 2001-01-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Cal-Farm Insurance Company

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $3,197,000 has been established for the company.

Name of Company:

Cal-Farm Insurance Company

Business Address:

1601 Exposition Boulevard, Sacramento, California 95815

State of Incorporation:

California

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30531 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, DC 20226.

Dated: November 8, 1983.

D. H. McGrath, Jr.,

Acting Commissioner.

[FR Doc. 83-30872 Filed 11-15-83; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1983 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Erie Insurance Company

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $473,000 has been established for the company.

Name of Company:

Erie Insurance Company

Business Address:

100 Erie Insurance Place, Erie, Pennsylvania 16530

State of Incorporation:

Pennsylvania

Certificates of authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30532 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, D.C. 20226.

Dated: November 8, 1983.

D. H. McGrath, Jr.,

Acting Commissioner.

[FR Doc. 83-30874 Filed 11-15-83; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1983 Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds; Industrial Indemnity Company of the Northwest

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $295,000 has been established for the company.

Name of Company:

Industrial Indemnity Company of the Northwest

Business Address:

2121 Fourth Avenue, Suite 1500, Seattle, Washington 98121

State of Incorporation:

Washington

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list or qualified companies is published annually as of July 1 in Department Circular 570, with details as to the underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30535 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, D.C. 20226.

Dated: November 8, 1983.

D. H. McGrath, Jr.,

Acting Commissioner.

[FR Doc. 83-30875 Filed 11-15-83; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1983 Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds; St. Paul Mercury Insurance Company

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $2,019,000 has been established for the company.

Name of Company:

St. Paul Mercury Insurance Company

Business Address:

385 Washington Street, St. Paul, Minnesota 55102

State of Incorporation:

Minnesota

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30540 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, DC 20226.

Dated: October 31, 1983.

W. E. Douglas,

Commissioner.

[FR Doc. 83-30873 Filed 11-15-83; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

National Cemetery Bath, New York; Development of Six Acres; Finding of no Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed donation of land to the VA for the purpose of expanding the National Cemetery at Bath, New York, and has determined that the potential environmental impacts will be minimal from the development of this project.

The project is the acquisition and development of six acres of land at Bath National Cemetery through donation by the American Legion. The land is contiguous to the north boundary of the existing cemetery and will be developed for burial as needed.

Development of the project will cause minor short term impacts in the form of air pollution (dust and fumes) and soil erosion during construction operations. The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluted relative to the considerations of both context and intensity so defined by the Council on Environmental Quality, 40 CFR 1508.27.

The Environmental Assessment has been prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) Regulations 1501.3 and 1508.9. A Finding of No Significant Impact has been reached based on the information in the assessment. The results of the assessment are available for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: November 8, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 83-30819 Filed 11-15-83; 8:45 am]

BILLING CODE 8320-01-M

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains proposed extensions and revisions and lists the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed forms and supporting documents may be obtained form Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration , 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisenger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the forms should be directed to the OMB Desk Officer on or before January 16, 1984.

Dated: November 10, 1983.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits.
2. Request for Employment Report in Connection with a Claim for Disability Insurance Benefits.
3. Va Form Letter 29-30a.
4. On occasion.
5. Individuals or households.
6. 8,400 responses.
7. 2,100 hours.
8. Not applicable.

Revisions

1. Department of Veterans Benefits.
2. Claim for Monthly Payments of United States Government Life Insurance.
3. VA Form 29-4125k.
4. On occasion.
5. Individuals or households.
6. 1,080 responses.
7. 270 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Application for Reinstatement (Non-medical Insurance Age 50 and Under).
3. VA Form 29-353a.
4. On occasion.
5. Individuals or households.
6. 1,500 responses.
7. 500.
8. Not applicable.

[FR Doc. 83-30869 Filed 11-15-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 222
Wednesday, November 16, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Reserve System	1
Nuclear Regulatory Commission	2

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Monday, November 21, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a meeting on November 17, 1983.)
2. Proposed purchase of computers within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employee.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: November 10, 1983.

James McAfee,

Associate Secretary of the Board.

[S–1597–83 Filed 11–10–83; 4:07 pm]

BILLING CODE 6210–01–M

2

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, November 17, 1983 and Week of November 21, 1983.

PLACE: Commissioner's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS DISCUSSED: *Thursday, November 17:*

9:30 a.m.
Briefing on State of the Nuclear Industry (SESE) (Public Meeting) (As Announced)
10:30 a.m.
Briefing on State of the Nuclear Industry (USC) (Public Meeting) (As Announced)
1:30 p.m.
Meeting with ACRS (Public Meeting) (As Announced)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (Items Revised):
a. Final Immediate Effectiveness Order for San Onofre 2 and 3 (*Postponed* from November 10)

Week of November 21: Tuesday, November 22:

10:00 a.m.
Discussion of Stockpiling of Potassium Iodide for Public Use (Public Meeting)
2:00 p.m.
Briefing on Status of Low Level Waste Compacts (Public Meeting)

Wednesday, November 23:

11:30 a.m.
Affirmation/Discussing and Vote (Public Meeting):
a. Review of ALAB–729 and Review of ALAB–744 (*Tentative*) (*Postponed* from November 17)

TO VERIFY THE STATUS OF MEETINGS: Call (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Dated: November 14, 1983.

Walter Magee,

Office of the Secretary.

[S–1600–83 Filed 11–14–83; 3:56 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
November 16, 1983

Part II

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 2416-8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks, Gaseous and Evaporative Emission Regulations for 1985 and Later Model Year Heavy-Duty Engines, and Emission Regulations for 1978 and Later Model Year Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces the Environmental Protection Agency's decisions on gaseous and evaporative emissions from 1985 and later model year light-duty trucks and heavy-duty engines. It also includes a number of revisions to certification and testing requirements as well as other technical amendments. In taking these actions, EPA finalizes earlier proposed rules and responds to a petition from General Motors. Implementation will result in emission reductions by 1995 and should mean a capital savings to the industry and the nation.

DATES: These regulations take effect on December 16, 1983.

Note.—Under Section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under Section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

ADDRESSES: Material relevant to this final rule is contained in Public Docket Nos. A–81–11, A–81–20, and OMSAPC 79–1 at the U.S. EPA Central Docket Section. The dockets are located in the West Tower Lobby, Gallery 1, at 401 M Street, S.W., Washington, D.C. 20460, (202) 382–7548. The dockets may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for photocopying. In addition, free single copies of both EPA's Regulatory Support Document (containing environmental, economic, and useful-life analyses), and the Summary and Analysis of Comments, will be made available through: Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan 48105 (Attention: Heavy-Duty Section).

FOR FURTHER INFORMATION CONTACT: Mr. Glenn W. Passavant, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4408.

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000–0390.

I. Extended Summary

This notice is comprised of four major components and a number of other lesser elements. The major components are:

1. A 2-year revision (1985–86) of the heavy-duty gasoline engine hydrocarbon (HC) and carbon monoxide (CO) emission standards from the statutory levels to 2.5 grams per brake horsepower-hour (g/BHP-hr) HC and 40.0 g/BHP-hr CO measured on the EPA test cycle or 1.9 g/BHP-hr HC and 37.1 g/BHP-hr CO measured on the Motor Vehicle Manufacturers Association (MVMA) test cycle. Heavy-duty diesel engine emission standards remain at the statutory levels.

2. Implementation of a "split-class" approach for 1987 and later model year heavy-duty gasoline engine HC and CO emission standards. Under this approach, heavy-duty gasoline engines used in heavy-duty vehicles of 14,000 lbs. gross vehicle weight or less will meet the statutory standards of 1.1 g/BHP-hr HC and 14.4 g/BHP-hr CO on the Motor Vehicle Manufacturers Association test cycles and heavy-duty gasoline engines used in vehicles exceeding 14,000 lbs. gross vehicle weight will continue to meet the standards set for 1985.

3. A new test cycle for heavy-duty gasoline engines. For 1985 and 1986, manufacturers will have the option of using either the new cycle (the MVMA cycle) or the original cycle developed by EPA, with appropriate specified adjustments in emission standards. For 1987 and beyond, all new testing will be done using only the MVMA cycle.

4. Modifications to the full-life useful-life provisions for 1985 and later model year light-duty trucks and heavy-duty engines. Among other things, these modifications establish full-life periods for various vehicle and engine categories as follows:

Category	Full-life useful life
Light-Duty Trucks	11 years/120,000 miles.
Heavy-Duty Gasoline Engines	8 years/110,000 miles.
Light Heavy-Duty Diesel Engines	8 years/110,000 miles.
Medium Heavy-Duty Diesel Engines.	8 years/185,000 miles.
Heavy Heavy-Duty Diesel Engines.	8 years/290,000 miles.

In addition to these provisions, today's action contains a number of elements involving revisions to certification and testing requirements and a number of less significant changes and technical amendments. EPA is adding spark plug and exhaust gas recirculation allowable-maintenance intervals for heavy-duty gasoline engines certified to use leaded fuel, and is revising downward the turbocharger and injector allowable-maintenance intervals for heavy-duty diesel engines. The idle CO standard for heavy-duty gasoline engines is delayed until 1987, at which time it will be applied only to heavy-duty gasoline vehicles using catalysts. EPA is also revising the deterioration factor requirements for heavy-duty engines to allow the use of additive deterioration factors unless aftertreatment control technology is used, in which case multiplicative deterioration factors are required.

EPA is also revising the heavy-duty diesel engine certification and testing procedure by allowing a manufacturer, at its own risk, to waive the use of the cold-start requirement during certification testing. EPA will accept certification test data which does not include the cold-start requirement, but the cold start will remain part of the official test procedure, and EPA may use the cold start in any confirmatory, Selective Enforcement Audit, or recall testing.

This action includes several items related to the control of evaporative emissions from 1985 and later model year heavy-duty gasoline engines. First, it grants the petition from General Motors to change the implementation date of the new heavy-duty gasoline-fueled vehicle evaporative emission regulations from the 1985 *vehicle* model year to the 1985 *engine* model year. Second, it adopts a technical amendment changing the minimum test fuel temperature for both light-duty and heavy-duty evaporative emissions testing. It also amends Subpart M to allow manufacturers to use coastdown road load determinations (as originally intended), and corrects an error in a reference to a figure.

Finally, this action also includes a number of minor changes and technical amendments to the certification, Selective Enforcement Audit, and emission test procedure provisions applicable to light-duty trucks and

heavy-duty engines. This action deletes a proposal that addresses suspending audit activities when a hearing is held due to procedural violations, and corrects a number of clerical errors that were made in the amendments to the SEA procedures in the January 13, 1982 notice of proposed rulemaking, and in Appendix X in the January 12, 1983 final rule for 1984 and later model year light-duty trucks and heavy-duty engines. This action also includes technical amendments to the exhaust emissions calculation provisions applicable to motorcycles.

Today's rule represents the culmination of three of the regulatory relief initiatives which EPA committed to propose or study as part of the Administration's regulatory relief program announced in April 1981 (46 FR 21628). Even though EPA has revised the heavy-duty gasoline engine HC and CO emission standards to non-catalyst levels for two years, the standards promulgated here for heavy-duty gasoline engines still represent lifetime per-vehicle emission reductions of more than 27 percent for HC and more than 59 percent for CO from current levels. When the split-class approach is implemented in 1987, at least 70 percent of all heavy-duty gasoline engines will be meeting the statutory standards. In addition, all heavy-duty diesel engines will meet the statutory HC and CO standards beginning in 1985. These gains translate into total HC and CO emission reductions from all sources of 1.3 and 17 percent, respectively, by 1995.

At the same time, the revisions included in these new regulations should result in an aggregate capital savings of at least $40.1 million to the industry and a 5-year savings to the nation of approximately $371 million, compared to the projected costs of compliance with the originally promulgated rule.

II. Background of the Rule

In December 1979, EPA promulgated gaseous emission regulations for 1984 and later model year heavy-duty engines (HDEs) (45 FR 4136). A similar rulemaking affecting 1984 and later model year light-duty trucks (LDTs) was promulgated in September 1980 (45 FR 63734). The primary function of these rulemakings was to promulgate the statutory HC and CO emission standards called for in Section 202(a)(3)(A)(ii) of the Act as amended in 1977. As these original actions are pertinent to today's action, the dockets established in support of them (OMSAPC–78–4 and OMSAPC–78–2) have been incorporated by reference.

In addition to the statutory emission standards, these rulemakings implemented a number of other provisions also to be effective for the 1984 model year. The major provisions common to both rulemakings included:

1. Revised useful-life definition;
2. Revised certification requirements;
3. An idle test and an idle CO emission standard for gasoline-powered LDTs and heavy-duty gasoline engines (HDGEs); and
4. The implementation of a 10 percent Acceptable Quality Level for Selective Enforcement Audit (SEA) testing.

The HDE final rule also included a new emission test procedure and initiated an SEA program for HDEs.

At the time that these rules were being prepared, the industry had just finished a year of record sales (1978) and sales continued strong into 1979. However, in late 1979 and early 1980, a general economic downturn began. As 1980 progressed, the recession became more severe, and the effects on the recession persisted through 1981 and into late 1982. Engine and truck sales dropped dramatically and most manufacturers reported operating losses for 1980 and 1981. For some companies, these losses continued through 1982.

In response to these economic problems, on April 6, 1981, the Administration announced a number of regulatory relief initiatives aimed at reducing the economic impact of government regulations on the industry. Preliminary analyses by EPA indicated that several provisions of the 1984 LDT/HDE Final Rules which required substantial capital investment could be relaxed without causing a significant loss in expected emission reductions and air quality improvements. This announcement included a commitment: (1) To propose a temporary revision of the 1984 model year HDE emission standard to "non-catalyst" levels, (2) to delay for two years the implementation of SEA testing for HDEs and, (3) to propose relaxing the Acceptable Quality Level for LDT and HDE SEA from 10 percent to 40 percent. In addition, EPA announced a commitment to study further the 1984 HDE requirements, with special emphasis on EPA's new emission test procedure (known as the transient test), and the revised useful-life definition for LDTs and HDEs. A Notice of Intent on these first three actions was published in the Federal Register on April 13, 1981 (46 FR 21628), and a request for information on the areas for further study was published on June 17, 1981 (46 FR 31677).

On January 13, 1982 (47 FR 1642), EPA formally proposed a 3-year revision of the HDE CO standard to non-catalyst levels, proposed to relax the Acceptable Quality Level as mentioned above, and announced a 2-year deferral of the implementation date for the HDE SEA program. EPA did not propose to revise the statutory HDE HC standard, but solicited comment on the technological feasibility of the standard, especially for "non-catalyst" HDGEs. In the Notice of Proposed Rulemaking (NPRM), the statutory HC and CO standards were left in place after the 3-year temporary revision. Any subsequent revisions of the standards were left open for later consideration in the appropriate time period as provided in the Act. In addition, based on the responses received to the request for information, EPA formally reopened the useful life and HDE transient test procedure provisions for further comment.

The NPRM drew a large amount of comment in several significant areas. Manufacturers concurred with EPA's assessment of the need for non-catalyst standards for HDGEs, but disagreed with EPA on the appropriate levels for the standards, and expressed serious concern over the leadtime available for implementing non-catalyst standards in 1984. The useful life and transient test provisions also received significant comment. It was suggested, among other things, that the 1984 full-life useful-life provisions for LDTs and HDEs were impractical and unworkable, and entailed an unacceptably large increase in warranty and recall exposure. Also, the MVMA, on behalf of HDGE manufacturers, and the Engine Manufacturers Association (EMA), on behalf of heavy-duty diesel engine (HDDE) manufacturers, proposed alternative test cycles to the EPA transient test cycles and less stringent HC and CO emission standards than the statutory HC and CO emission standards. Comments received from the manufacturers generally concurred with EPA's proposal to relax the Acceptable Quality Level applicable to LDT and HDE SEA testing as well as EPA's decision to defer HDE SEA testing until 1986. Several comments were also received which expressed serious concern over the air quality impact of the changes proposed by EPA.

EPA agreed with the manufacturers' concerns over leadtime for the 1984 model year, and recognized that the issues raised by the manufacturers concerning the level of non-catalyst standards, useful-life provisions, and test procedure could not be resolved quickly, Given this situation, EPA decided to break the final rule into two separate actions. In the first portion of

the final rulemaking (FRM), published January 12, 1983 (48 FR 1406), EPA acted to revise the 1984 HDE emission standards to 1983 levels for a period of one year, and to allow full carryover of the other 1983 HDE provisions. EPA also finalized its proposal to revise the Acceptable Quality Level, deferred the start of LDT/HDE SEA testing from 1984 to 1986, and deferred the final implementation of the full-life useful-life provisions for LDTs and HDEs until 1985. Final decisions on the four remaining major issues (useful life, the level of the 1985 non-catalyst standards, HDE test procedures, and the longer term HDGE HC and CO standards) were left to the second portion of the FRM, as were final actions on a number of minor issues raised during the course of the rulemaking.

In a parallel action also published on January 12, 1983, EPA proposed modifications to the full-life useful-life provisions and also identified an alternative half-life useful-life provision. Based on earlier comments received, it was evident that implementation problems existed with the original full-life useful-life requirement. The goal of the proposal was to change the portions of the full-life requirement which led to implementation problems or unnecessary increases in jeopardy, while at the same time essentially retaining the benefits associated with the original full-life useful-life requirement.

As the most recent step in this process, on March 16, 1983, EPA released for comment a staff paper [1] which presented EPA's preliminary positions on three of the four remaining major areas which were not addresed in the first portion of the FRM. (Notice of availability of the staff paper was subsequently published in the Federal Register on April 21, 1983 (48 FR 17119), and a public workshop to discuss the staff paper was held in Ann Arbor, Michigan, on April 6, 1983.) The staff paper addressed the level of the "non-catalyst" HC and CO emission standards for 1985, the HDE emission test procedure issues related to the alternative test cycles and emission standards suggested by EMA and MVMA, and the question of the level of the HDGE HC and CO emission standards after the temporary revision to non-catalyst levels.

Today's action presents EPA's final decisions on the four major unresolved areas discussed above, and a number of lesser issues raised during the rulemaking process. These are described in the section which follows.

III. Description of the Action

The discussion below will describe the actions being taken today. The "Summary and Analysis of Comments" [2] provides additional analysis in support of today's actions, and is available in the public docket. Although the effect of the comments received on the actions being taken here may be mentioned, a more detailed presentation and analysis of the comments, and how they relate to the requirements prescribed in this final rule can be found in the section entitled "Public Participation." The public dockets referred to above constitute the record in support of EPA's final actions.

A. Emission Standards for 1985 and 1986 Model Year Heavy-Duty Gasoline Engines and for 1985 and Later Model Year Heavy-Duty Diesel Engines

Today's action promulgates HC and CO emission standards for 1985 and 1986 model year HDGEs, for 1987 and later model year HDGEs, and for 1985 and later model year HDDEs. Today's action also provides that 1985 and 1986 model year HDGEs shall be tested for emissions using either the EPA HDGE transient test cycle, or the alternative heavy-duty transient test cycle developed by the Motor Vehicle Manufacturers Association (MVMA cycle). HDDEs will only be certified using the EPA HDDE transient test cycle.

Heavy-duty gasoline engines certified using the MVMA cycle in the 1985 and 1986 model years must meet standards of equivalent stringency to 2.5 g/BHP-hr HC and 40.0 g/BHP-hr CO on the EPA transient cycle. The table below shows the levels that HDGEs must meet on each cycle:

Pollutant	EPA HDGE transient test cycle standards (g/BHP-hr)	Equivalent MVMA cycle standards (g/BHP-hr)
HC	2.5	1.9
CO	40.0	37.1
NO_x	10.7	10.6

HDDEs must meet the statutory standards of 1.3 g/BHP-hr HC and 15.5 g/BHP-hr CO as measured over the EPA HDDE transient test cycle.

Each manufacturer of HDGEs will choose one of the two cycles provided as options, and will certify all of its HDGE families using that cycle. After a manufacturer has chosen one of these cycles, all testing of that manfacturer's HDGEs by EPA (*e.g.*, confirmatory, in-use recall, SEA testing) will be conducted using the same cycle.

B. Emission Standards for 1987 and Later Model Year Heavy-Duty Gasoline Engines

Today's action promulgates a "split-class" approach to HDGE emission control beginning with the 1987 model year. This approach was originally contained in an EPA Staff Paper released for public comment in March 1983, and is adopted today with minor modifications. In general, the approach will necessitate the use of catalytic converters in the lighter HDGEs, but not the heavier HDGEs.

The alternative test cycle provisions for HDGEs in the 1985–86 model years will no longer be effective beginning with the 1987 model year. Instead, all HDGEs will be certified using the MVMA cycle. Effective with the 1987 model year, HDGEs intended for use in Classes IIB and III applications (up to 14,000 lbs. gross vehicle weight (GVW)) will be required to meet standards of 1.1 g/BHP-hr HC, 14.4 g/BHP-hr CO, and 10.6 g/BHP-hr NO_x as measured over the MVMA cycle. These standards are of equivalent stringency to standards of 1.3 g/BHP-hr HC, 15.5 g/BHP-hr CO, and 10.7 g/BHP-hr NO_x as measured over the EPA HDGE transient test cycle, and for HC and CO represent the 90 percent reductions from baseline levels established as a goal in the statute.

Heavy-duty gasoline engines intended for use in Classes IV–VIII applications (over 14,000 lbs. GVW) will be required to meet the 1985 model year MVMA cycle standards set forth in the preceding section. Although all *new* certification testing of 1987 and later model year HDGEs will be performed using only the MVMA cycle and standards, carryover of EPA cycle-based certification for HDGEs in Classes IV–VIII will be permitted.

There will be no change in the emission standards applicable to HDDEs, which will remain at the statutory goals of 1.3 g/BHP-hr HC and 15.5 g/BHP-hr CO as measured over the EPA HDDE transient test cycle.

In response to industry concerns regarding the inclusion of HDGEs in Class III applications (10,001–14,000 lbs. GVW) under the statutory standards, EPA has modified the split-class approach to allow up to 5 percent of a

[1] "Issue Analysis: Final Heavy-Duty HC and CO Standards," EPA Staff Report, March 1983. (All documents footnoted in this preamble are available in the public dockets referenced in the *Addresses* section.)

[2] "Summary and Analysis of Comments on the Notice of Proposed Rulemaking for Revised Gaseous Emission Regulations for 1984 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines," U.S. EPA, OANR, OMS, ECTD, SDSB, April 1983.

manufacturer's combined Classes IIB and III sales to be reclassified. Manufacturers will be permitted to certify one or more configurations to the less stringent standards, provided that model year sales of those configuration(s) do not exceed 5 percent of their total model year sale of all Classes IIB and III configurations. These reclassified configuration(s) will be required to meet the emission standards applicable to HDGEs in Classes IV–VIII applications.

C. Useful Life

In response to comments on the useful-life proposal, modifications are being made to the HDE/LDT useful-life provisions. The heavy-duty diesel engine class has been divided into three subclasses based on intended service application. The light heavy-duty diesel subclass consists of lighter duty engines sold primarily for use in pickups, delivery vehicles and recreational vehicles; the medium heavy-duty diesel subclass is comprised of engines typically used for short-haul intra-city vehicles, and the heavy heavy-duty diesel subclass consists of engines primarily used in long-haul inter-city operations. At the time of certification, each HDDE manufacturer will classify its engine families into the appropriate classes based upon intended use and service life. The former useful-life labeling requirement has been withdrawn and is replaced by a requirement to label HDDEs as to their certified subclass, as defined above. Any HDDE, LDT or HDGE granted an alternative useful-life period by the Administrator will also be required to label the vehicle/engine with the alternative useful-life value.

Based on the comments,[2] the useful-life periods for the various vehicle and engine classes have been revised as follows:

Light-Duty Truck	11 Years/120,000 mi.
Heavy-Duty Gasoline Engine	8 Years/110,000 mi.
Light Heavy-Duty Diesel Engine	8 Years/110,000 mi.
Medium Heavy-Duty Diesel Engine.	8 Years/185,000 mi.
Heavy Heavy-Duty Diesel Engine	8 Years/290,000 mi.

As proposed, warranty exposure is reduced to the previous limits of 5 years/50,000 miles for LDTs, HDGEs, and light-HDDEs and 5 years/100,000 miles for medium-HDDE's and heavy/HDDE's. In addition, EPA is establishing a policy of not selecting engines for recall testing that are past 75 percent of their useful lives, although recall *liability* extends beyond that point; *see* 45 FR 36396, May 30, 1980. The rebuild criteria formerly specified in 40 CFR 86.084–21(b) are also eliminated.

D. Revisions to Certification and Testing Requirements

During the course of the rulemaking, a number of changes to the certification and testing a requirements were raised either by EPA in proposal, or by the commenters in their responses to requests for information on the proposal. The changes being made are discussed below.

1. *Allowable Maintenance.* In response to the temporary revision of the HDGE HC and CO standards to "non-catalyst" levels, EPA is modifying two of the allowable-maintenance intervals to accommodate the use of leaded fuel. The unleaded fuel intervals of 25,000 miles for spark plugs and 50,000 miles for exhaust gas recirculation (EGR) values are being retained. However, EPA is also including less demanding intervals of 12,000 miles for spark plugs and 24,000 miles for EGR valves for HDGEs certified for use with leaded fuel.

In addition, EPA is correcting an omission from the original publication of the LDT and HDE EGR allowable-maintenance interval, and is continuing the current requirement that any scheduled EGR maintenance conducted by the manufacturer and recommended to the owner must be accompanied by an audible or visual signal to alert the owner to the need for such maintenance. This requirement is part of the current-maintenance provisions for LDTs and HDEs. Finally, in response to comments and submitted data, EPA is revising the HDDE allowable-maintenance intervals for injector replacement and turbocharger rebuild or replacement from 200,000 miles to 150,000 miles.

2. *Idle Carbon Monoxide Standard and Test Procedure.* In response to the temporary revision of the HDGE emission standards to "non-catalyst" levels and to several comments received during the course of the rulemaking, EPA is revising three portions of the idle CO emission requirements for gasoline-powered LDTs and HDEs. First, the idle CO requirement for HDGEs is being deferred until 1987. At that time, only HDGEs using catalytic converters will be required to meet the idle CO standard. Second, to make the idle CO standard conform to a more practical degree of accuracy, the original standard is being rounded from 0.47 to 0.50 percent. This provides the accuracy necessary to demonstrate compliance without demanding impractical precision. Third, in the first portion of the Final Rule, EPA established provisions to allow LDT manufacturers to develop their own means of determining the 1984 model year idle CO deterioration factors (DFs). For sake of clarification, EPA, notes that this approach is being retained for 1985 and later model year LDTs as an inherent portion of the useful-life provisions being implemented in this action.

3. *Deterioration Factors for Heavy-Duty Engines.* For non-catalyst technology for HDGEs for 1985 and 1986, EPA is revising its approach to HDE DF requirements. HDEs certified without aftertreatment devices will use additive DFs, as has been done in the past; those certified with aftertreatment devices (*e.g.*, catalytic converters, trap-oxidizers) will use multiplicative DFs.

4. *Cold-Start Requirement for Heavy-Duty Diesel Engine Testing.* As a part of the comments received on the HDDE transient test procedure, several manufacturers requested that the cold-start requirement for HDDE emission testing be removed. As discussed below, EPA is reluctant to remove this requirement entirely. However, as part of today's action, EPA is allowing a manufacturer to bypass the cold-start requirement at its own risk.

EPA will accept emission test data for certification which does not include the cold start. However, all SEA, recall, and confirmatory testing conducted by EPA may include the cold start. Manufacturers choosing to skip the cold-start data requirement in certification testing do so with the full understanding that they accept any jeopardy which might arise from any differences in emission test results.

E. Minor Changes and Technical Amendments

As a part of today's action, EPA is implementing a number of minor changes and technical amendments to the certification, SEA, and emission test procedure provisions applicable to LDTs and HDEs (Subparts A, I, K, N, and P of Part 86).

Test procedure changes arose as experience was gained by EPA and the manufacturers with the transient, smoke, and idle test procedures. Changes were both requested by the manufacturers and initiated by EPA. Many of these test procedure changes are simply corrections of typographical and other errors, inadvertent omissions, and clarification of previous provisions. Other changes are being made to minimize repeated EPA approvals for previously allowed inconsequential deviations from the existing procedures, to reduce costs associated with testing and certification, and to incorporate technical improvements.

Another change being made is that 2-stroke HDDEs are being excluded from

the closed crankcase requirements for naturally aspirated engines. Also included in this action are changes to the certification and SEA provisions.

When "Appendix X—Sampling Plans for Selective Enforcement Auditing of Heavy-Duty Engines and Light-Duty Trucks" was promulgated (48 FR 1414), it included a clerical error. Table 2, entitled "Sampling Plan Code For Letter 'A'," should have been published with a 16 in the column headed "Pass No." in stage 30 of the sample criteria, rather than with the 15 that appeared there in the final rule.

Section 86.544–78 (Calculations) of Subpart F (Motorcycles) is also being amended to make its terminology consistent with analogous sections in other subparts. Specifically, the concentration of carbon dioxide in the dilution air (CO_{2d}) is now being shown in terms of percent rather than ppm, and the equation applying this concentration is adjusted accordingly. Also, portions of variable names have been subscripted to be consistent with other subparts. These changes have no substantive effect.

The number of minor changes being implemented is too large to warrant discussion of each here. However, the substantive changes mentioned above are identified and discussed in several portions of the "Summary and Analysis of Comments" [2] which supports this rule. The reader is referred to that document for further information. In addition, a thorough listing of all of the changes and amendments to the HDE/LDT SEA Regulations is available in Public Docket No. A–81–11 as a memorandum entitled "Minor Amendments to the HDE/LDT SEA Regulations Contained in the Final Rule." Interested parties are referred to that memorandum for further information.

F. Delay of the Heavy-Duty Gasoline Vehicle Evaporative Emission Standards

On January 12, 1983, EPA published new regulations for the control of evaporative emissions from heavy-duty gasoline-fueled vehicles (48 FR 1430). These new standards were to be met beginning with 1985 model year heavy-duty gasoline vehicles, or in the September-October 1984 timeframe.

After publication of the final rule, EPA received a petition for reconsideration from General Motors (GM), requesting that implementation of these new evaporative emission standards be delayed from the start of the 1985 *vehicle* model year to the start of the 1985 *engine* model year, a period of 3–4 months. Although it is normal practice to introduce new model year vehicles and engines at the same time, GM expressed some concern over the leadtime remaining for the more stringent 1985 HC and CO standards, and suggested that these leadtime concerns might force delay of the introduction of new 1985 HDGEs until calendar year 1985. In the interim, GM planned to use 1984 model year engines in its 1985 model year vehicles. If the HDGV evaporative emission standards remained in place for 1985 model year vehicles, GM would be required to design and certify evaporative emission control systems for 1985 model year vehicles with 1984 model year engines for the first few months of the 1985 vehicle model year, only to do the same for 1985 model year vehicles and engines several months later. This would represent a significant financial outlay for GM (and possibly other manufacturers) for only three to four months of vehicle/engine production, and would not be a cost effective use of resources.

EPA tentatively agreed with the petition, and on June 3, 1983 (48 FR 24932), EPA published a Notice of Intent to grant GM's petition. As part of that notice, EPA indicated its intent to issue a technical amendment to lower the minimum test fuel temperature from 50°F to 45°F for both light- and heavy-duty vehicles for evaporative emissions testing. The only comments received in response to this notice supported GM's concerns and EPA's proposed technical amendment. Therefore, as part of today's action, EPA is acting to revise the implementation date for the start of the new evaporative emission standards for heavy-duty gasoline vehicles from the 1985 vehicle model year to the 1985 engine model year and to change the test fuel temperature specification.

EPA is also taking this opportunity to make two minor corrections to the heavy-duty evaporative emissions test procedure. The first change corrects an error of omission. The Summary and Analysis of Comments and the Preamble of the heavy-duty evaporative Final Rule both explicitly stated that EPA would allow the manufacturers to use coastdown procedures in order to determine the road load power for dynamometer settings. However, the regulatory text of the Final Rule inadvertently did not include this provision. Therefore, this action corrects § 86.1229–85(b)(2) to include the option for manufacturers to use coastdown procedures. The second correction is for a typographical error. The reference in the text of § 86.1230–85 to the figure in that section is incorrect. This action changes that reference from Figure M82–1 to Figure M85–1.

IV. Economic Impact

EPA expects that the interim non-catalyst standards and split-class approach being implemented in this action will result in significant cost savings for the HDGE manufacturers and consumers purchasing trucks and buses powered by HDGEs. EPA has prepared a full analysis of the capital and consumer costs and savings of these regulations. This is available as part of the Regulatory Support Document.[3] The major points are summarized below, with all costs in 1983 dollars.

EPA now expects that compliance with the original rule would have required a capital investment of approximately $135.3 million and would have caused a $383 increase in the purchase price of the average truck or bus powered by an HDGE to cover emission control hardware, research and development, and other fixed costs. Operating and maintenance costs would have increased $249 due to the use of unleaded fuel, but this was largely offset by the decreased maintenance benefits of unleaded fuel. Thus, an increase in operating and maintenance costs of $17 would remain. No fuel economy penalty was associated with the original standards; in fact, a modest improvement seemed likely.

Compliance with the interim non-catalyst standards (1985–86) is expected to require a capital investment of $68.6 million, for a savings of $66.7 million over the original rule. An average purchase price increase of $113 is now expected over current engine costs with a $20 increase in operating and maintenance costs, resulting in a savings of $267 per engine over the original rule.

Implementing the split-class approach in 1978 will necessitate a capital investment of approximately $26.6 million for light heavy-duty gasoline engines to use catalyst technology. Thus, the overall capital costs savings mentioned above will be reduced by this amount. Compliance costs will rise for light heavy-duty gasoline engines but will remain the same for heavy heavy-duty gasoline engines. The use of catalyst technology is expected to result in a purchase price increase of $155 for each light heavy-duty gasoline vehicle. However, changes in operating and maintenance costs will actually result in a net savings of $46 in this area, leaving a net consumer cost increase of $109. Both cost increases and savings are

[3] "Regulatory Support Document-Revised Gaseous Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," U.S. EPA, OANR, OMS, ECTD, SDSB, July 1983.

incremental over 1985–86 costs and fuel economy will remain at the levels anticipated with the interim standards. Since heavy HDGEs will continue, for now, to meet the interim standards after 1986, no further costs will be incurred for these engines. Therefore, on a fleetwide average basis, HDGE compliance costs are $110 for purchase price and −$32 in operating and maintenance costs.

In summary, EPA expects HDGE manufacturers will accrue a capital cost savings of approximately $40.1 million, compared with the original rule, primarily as a result of the split-class approach. On an aggregate cost basis for the first five years of sales, the interim standards and split-class approach should result in an aggregate vehicle lifetime savings (purchase price and operating and maintenance) of $349 million for the users of heavy-duty gasoline vehicles over costs which would have occurred under the original rule.

V. Air Quality Impact

Although the net air quality benefit of these regulations is not quite as large as that expected from the rule promulgated in 1979, the implementation of the emission standards and regulations contained in this rule will nevertheless substantially reduce the amount of HC and CO emitted to the atmosphere by heavy-duty vehicles. EPA has prepared a comprehensive air quality impact analysis, the results of which are discussed below. The full analysis is available as part of the Regulatory Support Document.[1]

Heavy-duty diesel engines will meet the statutory standards beginning in 1985 and most other requirements for diesels remain largely unchanged. Therefore, EPA expects that most of the emission reduction benefits originally expected from HDDEs will still occur.

Beginning in 1985, HDGEs will meet revised HC and CO standards. Even though these are less stringent than the statutory standards, average per vehicle lifetime HC and CO emissions will be reduced more than 27 percent and 59 percent, respectively, compared to current levels. Beginning in 1987, light HDGEs will meet the statutory HC and CO standards, resulting in average lifetime HC and CO emission reductions of 48 and 64 percent over current levels, and 29 and 62 percent over interim standard levels. Light heavy-duty gasoline vehicles account for the majority of all HDG vehicle sales, so on a fleetwide basis average lifetime HC and CO emission reductions of 40 and 74 percent, compared to the base case of no new standards, and 16 and 35 percent, compared to the revised interim standards, are expected. These average lifetime reductions will reduce total non-methane HC emissions from all sources by 1.3 to 1.5 percent in the late 1990's for low-altitude areas and 2.6 to 3.0 percent in high-altitude areas. Similarly, total CO emissions from all sources will be reduced 17 to 18 percent in low-altitude areas and 18 to 20 percent in high-altitude areas in the same time period.

When these reductions are translated into air quality improvements, average ozone air quality in the late 1990's will improve up to 1 percent in low-altitude areas and 1 to 2 percent in high-altitude areas. Average CO air quality will improve by about 5 percent in both low- and hight-altitude areas in the late 1990's.

Had the original rule been left in place for 1985 slightly greater reductions in low-altitude non-methane HC emissions, and in low- and high-altitude CO emissions, would have occurred during the 1990's. Non-methane HC emissions would have decreased about an additional 0.1 percent at low altitude. CO emissions would have decreased an additional 2.3 to 2.4 percent at low altitude and 1.7 to 2.3 percent at high altitude. These additional reductions are relatively slight in comparison to the reduction which will occur under this rule, and would substantially increase the costs of compliance both to the manufacturers and the consumers of HDEs.

VI. Public Participation

The structure and content of the final rules promulgated here today were shaped considerably by the public participation during the course of the rulemaking. Opportunities for public participation included two formal EPA requests for information and comment, two formal public hearings, and two public workshops. In addition, EPA provided opportunity for comment on the petition to delay the implementation date of the heavy-duty gasoline vehicle evaporative emission regulations.

A wide variety of organizations and individuals presented oral and/or written comments on the proposed actions. These included manufacturers, trade associations, public interest and environmental groups, one government agency, two private citizens, and one U.S. Senator.

This section of the preamble highlights the major comments submitted in each area, and describes how these comments affected the rulemaking. A review of this section should make clear how the final rule differs from the proposal and why. However, this section is not a detailed response to all comments received, and the reader is encouraged to consult the separate document entitled "Summary and Analysis of Comments,"[2] as well as other comprehensive EPA staff analyses on various issues discussed below. These, as well as all public comments, are assembled in the public dockets referenced above.

A. Model Year 1985 Emission Standards

There have been several iterations of EPA action and public reaction as this issue has developed over time.

On January 13, 1982, EPA proposed that the 1984 statutory emission standards for HDGEs be relaxed to non-catalyst levels of 1.3 g/BHP-hr HC, 35.0 g/BHP-hr CO, and 10.7 g/BHP-hr NO_x. It was intended that this action defer the capital investments required for catalyst development, and thus provide economic relief to an industry beset by recession and decreased sales.

In public comments to this NPRM, only Ford and GM submitted transient test data. Chrysler and IH did not comment on technological feasibility, and, in fact, indicated that they were leaving the HDGE market. (Both Chrysler and IH have since indicated that they might reverse these decisions; see the discussion later in this preamble.) Ford recommended non-catalyst emission standards of 3.3 g/BHP-hr HC and 42 g/BHP-hr CO; GM recommended emission standards of 2.9 g/BHP-hr HC and 43.0 g/BHP-hr CO. GM also argued that standards of 3.5 g/BHP-hr HC and 70 g/BHP-hr CO were justified on the basis of air quality needs, fuel economy, and cost. GM also argued that EPA's proposed standards could severely degrade engine durability because of increased in-cylinder and exhaust system temperatures.

In reviewing these comments, EPA staff felt that additional engineering data were required to determine the lowest emission standards achievable without catalysts. Specific requests for more detailed information were made to HDGE manufacturers on June 17, 1982; Ford provided additional engineering data; GM declined to do so. At a meeting with EPA on January 28, 1983, GM again claimed that EPA's proposed standards would adversely affect engine durability and fuel economy.

In a **Federal Register** Notice of January 12, 1983, EPA officially delayed the 1984 model year emission requirements until 1985. This 1-year revision of the standards was justified on the basis of leadtime, economics, and the number of other issues yet to be resolved (*i.e.*, alternative test cycles, useful life, etc.).

Reviewing all comments and data available at the time, and taking into account the additional year of development leadtime, EPA then reanalyzed the feasibility issue. This feasibility analysis,[4] the summarized results of which were discussed at an April 6, 1983 public workshop, was also distributed for public comment on April 12, 1983. The analysis recommended that non-catalyst emission standards of 2.5 g/BHP-hr HC and 35.0 g/BHP-hr CO be promulgated for 1985. EPA's intent to relax the proposed non-catalyst HC standard was based upon a review of the development data submitted by Ford and GM in April 1982. All but one engine family were still well above the target emission level needed to assure compliance with a 1.3 g/BHP-hr HC standard, while all but one engine family met the target level for CO. Using data provided by Ford, EPA concluded that modest reductions in HC were still possible, and that compliance with a 2.5 g/BHP-hr HC standard in 1985 would be possible even for the highest emitting engines.

In comments received by May 6, 1983, the conclusions and methodology of EPA's latest feasibility analysis were again challenged. GM vigorously disputed the conclusions of EPA's feasibility analysis, characterizing the analysis as "entirely inadequate." In GM's opinion, forced compliance with the 35.0 g/BHP-hr CO standard would preclude the production of reasonably durable engines, and would invite tampering in the field. With respect to data, GM submitted a confidential qualitative discussion of various aspects of its development work, but submitted no new emission data. GM claimed that it has only just begun to evaluate the feasibility of the 2.5/35.0 g/BHP-hr standards.

On the other hand, Ford provided a comprehensive review of the emissions status of its HDGE product line. Ford also disputed EPA's feasibility analysis, characterizing it as overly optimistic, and as having overestimated the capabilities of some HDGEs. Ford recommended half-life standards of 2.19 g/BHP-hr HC and 42.6 g/BHP-hr CO based upon the MVMA cycle; according to Ford, these are equivalent to full-life EPA cycle standards of 3.07 g/BHP-hr HC and 47.8 g/BHP-hr CO.

For this rulemaking, EPA's determination of feasible interim standards is based largely upon the only available data, that of Ford. EPA notes that Ford has achieved significant reductions in HDGE emissions, although very little of them in the last year. Based upon reasonable estimates of full-life deterioration, four out of five of Ford's engine families today fail to comply with a 35.0 g/BHP-hr CO standard. EPA agrees that reductions in low-mileage CO targets for most of these engines would be necessary to comply with a 35.0 g/BHP-hr standard, and that these recalibrations could carry risks of decreased engine durability. This, plus the diminishing leadtime until the 1985 model year, leads EPA to the conclusion that an iterim CO standard of 40.0 g/BHP-hr should be promulgated. On the other hand, four out of five of Ford's engine families already substantially comply with the 2.5 g/BHP-hr HC standard, and EPA concludes that the 2.5 g/BHP-hr standard is feasible and should also be promulgated. At these standards, only one Ford engine family requires additional development work; given the remaining leadtime and the fairly modest amount of further reduction required, EPA concludes that even Ford's highest emitting engine can be certified to 2.5 g/BHP-hr HC and 40.0 g/BHP-hr CO in 1985. Based upon EPA's analysis of GM's submissions, the same conclusions are applied to GM's engines.

The final technological feasibility analysis appears as Issue A.1., "Technological Feasibility," in the "Summary and Analysis of Comments."[2]

B. 1987 and Later Heavy-Duty Gasoline Engine Emission Standards

Of the various commenters to this rulemaking, only Ford, GM, the Natural Resources Defense Council (NRDC), and the Manufacturers of Emissions Controls Association (MECA) commented specifically on the split-class approach.

Ford's comments were supportive of the split-class approach with two major reservations. Ford recommended that the breakpoint between catalyst and non-catalyst classes be set at 10,000 lbs. GVW (between Classes IIB and III). Ford also claimed that implementation of the split-class approach should be set for model year 1988, on the bases of both technological grounds and statutory requirements for HDE leadtime.

General Motors responded to the EPA Staff Paper with an alternative split-class approch of its own, which had little in common with the EPA approach. GM recommended that the breakpoint be set at 10,000 lbs. GVW, and that testing below this point be conducted on chassis dynamometers with emission standards and test procedures similar to those applicable to LDTs. GM did not dispute the feasibility of the lighter subclass of HDGEs attaining compliance with the statutory standards in 1987.

Both manufacturers expressed concern that LDT catalyst systems would not be as readily adaptable to HDGE applications as EPA had claimed.

The NRDC argued for implementation of the split-class approach in model year 1985 (with some exemptions), and that the breakpoint should be raised to 20,000 lbs. GVW. NRDC also noted that the heavier HDGEs must also comply with the statutory standards as some future date.

The MECA agreed with the rationale behind EPA's split-class approach. MECA also commented that, assuming that Classes IIB and III HDGEs are not significantly different than current LDTs, they foresaw no difficulty in making catalysts available on an as-needed basis for model year 1987.

In analyzing these comments, EPA believes that the breakpoint should be established at 14,000 lbs. (Class III) for two main reasons (see Issue B.12 in the "Summary and Analysis of Comments"[2]). Roughly 70 percent of the Class IIB vehicles could "migrate" to Class III (thus avoiding catalysts), while the number of Class III vehicles able to migrate to Class IV is small. Also, different engine models are generally used in vehicles above and below 14,000 lbs GVW, providing a natural breakpoint.

EPA still does not foresee significant problems in applying LDT type catalytic converter technology to Classes IIB and III vehicles. As discussed in more detail in the "Summary and Analysis of Comments" [2] the only significant difference affecting compliance technology between LDTs and the lighter HDEs is engine exhaust mass flow induced by the heavy-duty transient engine test. This difference should only affect CO emissions, and EPA's analysis shows several feasible modifications to the air injection system and catalyst system to permit compliance with the CO standard on the heavy-duty test.

Although EPA believes the application of the heavy-duty transient test to the Class IIB vehicles is appropriate, the Agency remains open to the future development of equivalent test procedures, such as a chassis dynamometer test, for this class of vehicles.

There may be a few unique applications which are more appropriately grouped with the heavy-HDGEs meeting non-catalyst standards. EPA will, therefore, allow manufacturers to certify up to five percent of their light-HDGEs to the less stringent standards

[4] Letter to commenters (plus attachments) from Charles L. Gray, Jr., U.S. EPA, OANR, OMS, ECTD, April 12, 1983.

applicable to the heavy-HDGEs. This option will not apply to the evaporative emission standard.

EPA believes this approach is permissible under the Agency's broad authority to subcategorize heavy-duty engines in establishing emission standards. *See* Section 202(a)(3)(A)(iv) of the Act. As described in more detail in the "Summary and Analysis of Comments," [2] this approach arose from the fact, noted by commenters, that some Classes IIB and III HDGEs are in fact used in applications, *e.g.*, dual rear-wheel and "fifth-wheel" (pop truck), that are more similar to Classes IV–VIII vehicles than to LDTs. Since the split-class approach is based on the transfer of LDT catalyst technology to HDGEs which are used in similar applications, it would be inappropriate to implement this approach without taking this fact into account.

EPA considered evaluating vehicle usage on a case-by-case basis to determine which vehicles in Classes IIB and III would appropriately qualify for certification to Classes IV–VIII standards, but concluded that the administrative burdens of that mechanism would be unwieldy, and could not be justified in light of the relatively small segment of the vehicle population involved. The 5 percent figure is the Agency's projection, based on recent actual and projected future sales data, of the number of vehicles in legitimate need of this relief. However, EPA will consider moving to a case-by-case approach if experience with the current system shows it is being abused, *i.e.*, that a significant number of vehicles are being certified to standards not appropriate to their applications in use.

EPA has also determined that implementation of the split-class approach in model year 1987 is both legally permissible and feasible (see Issue A. 1 in the "Summary and Analysis of Comments".[2] Considering first the legal issues, EPA believes it has the authority to implement catalyst-based standards in 1987. It is true, as noted by Ford, that the statute grants to manufacturers four years leadtime before implementing revised standards; however, manufacturers have in fact had more than four years to meet the catalyst-based standards. EPA first promulgated those standards in January of 1980, to become effective in 1984, and did not propose to alter them for two years, until January of 1982. Final action to revise the standards was not taken for another year, until January of 1983.

Therefore, depending on how one calculates the period of uncertainty during which the final standards were in doubt, manufacturers had two or three years in which to prepare to meet the standards. The rules published today provide three more years. As suggested by NRDC, therefore, EPA could legally have made these rules effective earlier than 1987; however, the Agency believes that would provide inadequate leadtime for compliance, as explained below.

Moreover, given the delays in meeting the 90 percent reductions, EPA believes it is consistent with Congress' intent to implement those standards at the earliest feasible date. Although Congress was concerned that manufacturers be given adequate leadtime for compliance, the overriding message of the statutory provisions for heavy-duty trucks and engines is for EPA to require the greatest degree of emission reduction feasible. As explained in the "Summary and Analysis of Comments,"[2] the record plainly reflects an ability to meet the statutory reductions, now delayed from the statutory 1983 deadline, by 1987.

Finally, EPA notes that at least one manufacturer has implicitly agreed that EPA has authority to make these standards effective earlier than 1988. As noted earlier, GM's alternative proposal called for the implementation of catalyst-based standards for a portion of the heavy-duty fleet in 1987.

With respect to technical leadtime, it is clear from the history of this action and from manufacturer comments that preliminary development work has already been underway for some time. Early catalyst testing has been in progress throughout 1983, and a significant portion of the necessary work (*e.g.*, reduction of engine-out emission levels for 1985) will soon be completed.

The most significant problem to be solved during development is determining the catalyst configurations and engine calibrations that will be needed to certify on the HDGE transient test. This is a relatively straightforward engineering problem of applying known LDT catalyst technology to another application. Worst case HDGE applications, in terms of catalyst use, need not be certified to the statutory standards under the split-class approach adopted today. In-use durability should, therefore, be similar to that of LDTs and should not represent a problem. Thus, the Agency is confident that 1987 implementation is within EPA's authority and poses no insurmountable technical difficulties for the industry.

Concerning the NRDC comment on the requirement for further reductions from the heavier HDGEs in the future, EPA agrees that the Agency lacks authority to grant the heavier truck classes a permanent exemption from the 90 percent reductions, unless those standards are revised based on pollutant-specific studies under Section 202(a)(3)(E) of the Act. The question of more stringent standards for the heavier classes will be addressed in future rulemakings as appropriate.

C. Alternative Test Cycles

In April 1982, EMA, MVMA, and their member companies recommended that EPA adopt their proposed alternative test cycles for diesel and gasoline-fueled HDEs.

The EMA believed that EPA's test cycle was unrepresentative of heavy-duty diesel operation. During the spring and summer of 1982, EPA reviewed the technical basis for the creation of the real time cycle (RTC) and the accumulated data base for comparison of the RTC to the EPA cycle. The Agency's analysis was distributed for public comment in early summer of 1982 This analysis forms Chapter 5 of Transient Test Study, which is Appendix B to the "Summary and Analysis of Comments." [2]

The EMA and its member companies took issue with two of EPA's conclusions. First, EMA disputed the need for an emission standard adjustment if the RTC was to be adopted, because the heavy-duty diesel cycle was never used in the standard setting process. Secondly, if a standard adjustment was to be made, EMA proposed a methodology which yielded a RTC-based HC standard of 1.2 g/BHP-hr instead of the 1.1 g/BHP-hr that EPA's methodology yielded. EMA and its member companies formalized their position on May 13, 1983 in a submission to EPA, and also recommended that only a single test cycle be used for certification (*i.e.*, either the RTC with a 1.2 g/BHP-hr HC standard or the EPA test cycle with the 1.3 g/BHP-hr HC standard).

In its analysis of the comments and the RTC,[2] EPA determined that the EPA and RTC cycles were statistically similar, and correlated very well with each other. While the cycles generate somewhat different emissions, both cycles would be technically acceptable for certification testing.

Since the two cycles yield somewhat different emission results, it was necessary to establish adjustments for the standards when using the EMA cycle to maintain equivalency with previously promulgated requirements. Through a correlation study of emissions data for engines operated over both test cycles, EPA has determined that a RTC-based HC standard of 1.1 g/BHP-hr is equivalent in emissions to the EPA

cycle-based HC standard of 1.3 g/BHP-hr. Since CO emissions from diesels are well below even the statutory CO standard, the HC standard adjustment is the only issue.

In their final comments the EMA and its member companies stated that they would perfer the EPA test cycle with its standard of 1.3 g/BHP-hr HC over the RTC-based HC standard of 1.1 g/BHP-hr. Since EPA retains confidence in its test procedure, and cannot accept the loss of benefits that would result from an RTC standard at the level suggested by EMA, the Agency is maintaining the EPA test cycle with its 1.3 g/BHP-hr HC standard for diesels.

The test cycle background for HDGEs is similar to that for HDDEs, but not the outcome. MVMA developed an alternative test cycle to the EPA test cycle because of its concern that the EPA cycle was not representative of real-world heavy-duty truck operation. EPA's analysis of MVMA's test cycle revealed that both cycles are very similar statistically. However, total engine work is about 10 percent higher on the MVMA cycle, and the MVMA cycle is less transient than EPA's. Because of these operational differences, the MVMA cycle gives lower emissions than the EPA cycle. See Issue A.3 of the "Summary and Analysis of Comments".[2]

A comparison of the two cycles using a data base of 35 gasoline-fueled engines revealed excellent correlation between them. This strong correlation implies that there is no advantage to using one cycle over the other to predict in-use emissions, provided standards are adjusted. Therefore, both cycles are acceptable to EPA.

The methology used to adjust the EPA cycle-based standards to MVMA cycle-based standards split the 35 engines into catalyst and non-catalyst technologies because different correlations exist between the test cycles for each technology. At the level of the 1985–86 HDGE standards, the resultant MVMA cycle-based standards equivalent to the EPA cycle-based standards are 1.9, 37.1 and 10.6 g/BHP-hr for HC, CO and NO_x respectively. For the statutory levels of 1.3 g/BHP-hr HC, 15.5 g/BHP-hr CO, and 10.7 g/BHP-hr NO_x, the equivalent levels on the MVMA cycle are 1.1, 14.4, and 10.6 g/BHP-hr, respectively.

When MVMA originally proposed their alternative test cycle, they indicated their overall preference for a single cycle, as opposed to various optional cycles. Environmental interests commenting on the test cycle issue also strongly supported adoption of only a single cycle, to prevent manipulation of the options to minimize the degree of emission control required. EPA agrees with these positions and intends to replace the existing HDGE test cycle with the MVMA cycle. However, EPA finds that the goal of a single set of test procedures is not reasonably attainable for the 1985 model year. Lacking resolution of the issue, some HDGE manufacturers have pursued their 1985 development work on the EPA cycle and others on the MVMA cycle. Because of this, MVMA has requested that both cycles be available in 1985. Therefore, for the 1985 standards EPA is providing the option of using either test cycle. However, each manufacturer must use the same test cycle for all of its HDGEs. This should minimize the potential for manufacturers to select the more advantageous cycle for particular engines. Beginning in 1987, EPA will accommodate what it perceives from the comments to be the technical preference of the industry by adopting the MVMA cycle for all subsequent testing.

EPA remains open to comment on the 1987 test cycle for gasoline-fueled engines. The Agency may reconsider its decision regarding cycle selection and standards adjustment if appropriate justification is presented.

D. Useful Life

As noted earlier, the January 12, 1983 NPRM proposed modifications to the full-life useful-life provision (limiting warranty and recall liability), or, as an alternative, an extended half-life useful-life provision. The extended half-life alternative included adjusted emission standards reflecting the reduced stringency of half-life plus extended durability testing using the 1983 model year procedures. In the NPRM EPA expressed its preference for the modified full-life proposal and offered the half-life alternative only in the event that further comments revealed unexpected problems with full life which could not be resolved. Industry response indicated a universal unwillingness to accept the half-life proposal because of the adjusted standards and extended durability testing requirements. On the other hand, some industry commenters indicated their support for the modified full-life provisions. One commenter (NRDC), while opposed to the extended half-life proposal, indicated that, in any event, adjusted standards would have to be an essential part of any half-life approach. EPA concurs with this view, and rejects the approach of promulgating half-life useful-life provisions without adjusting the emission standards to achieve comparable stringency. Moreover, EPA believes that in today's action it has been able to resolve all significant problems with the full-life program. Therefore, the basis for EPA's proposing the extended half-life alternative has been removed, and EPA has decided to promulgate a modified full-life program. Additional discussion of the following areas is given below: (1) Legal authority for the modified full-life requirement (2) the basis for dividing HDDEs into subclasses (3) potential recall problems (4) length of the assigned useful-life periods, and (5) the air quality benefits, or lack thereof, of full-life useful life.

A substantial number of comments were received concerning the legal authority for both the establishment of full-life useful life and for the proposed modifications. Manufacturers reiterated earlier comments that EPA lacked statutory authority to establish anything other than half-life useful-life periods for any vehicle class except motorcycles. Volkswagen of America (VW), in fact, stated that LDTs of less than 6,000 lbs. GVW fall into the LDV category of the Act and so had a statutory useful life of 5 years/50,000 miles. Comments regarding the proposed modifications argued that the Act requires a single useful life for certification, warranty, and recall purposes, which would preclude the proposed warranty limitation. Commenters cited examples purporting to show Congressional intent along the lines suggested.

The EMA suggested that the proposed HDDE classification system based on GVW of vehicles would unduly restrict sales, which might cross a number of vehicle class lines for any given engine. The EMA suggested an alternative classification system based on the intended service application for which the engine was sold. This system would classify HDDEs into one of three subclasses, dependent upon the type of service anticipated. The light heavy-duty diesel subclass would include lighter duty engines sold primarily for use in pickups, light delivery trucks, and recreational vehicles. The medium heavy-duty diesel subclass would encompass engines intended largely for intra-city short-haul commercial vehicles, while the heavy heavy-duty diesel subclass would consist of engines used in trucks for long-haul inter-city operation. An engine's classification under this approach would be based upon its expected primary use, but there would be no restriction on use in other applications. For example, a buyer might employ a medium-HDDE in what would usually be a heavy-HDDE application. EMA suggested that EPA review and approve the manufacturer's determinations of applicable classes for the individual engine families.

The EMA and others also believed that some of EPA's assigned useful-life periods were too long. Ford pointed out that the LDT figure was based on an average that included two different numbers from the same set of data (but using different analysis techniques). EMA suggested that the medium-HDDE useful-life period was too long, due to the inclusion of premium engines in the medium-HDDE miles-to-rebuild data set. Manufacturers also objected to the use of scrappage rate data in the determination of average useful-life values, since it included already rebuilt engines that would tend to raise the averages.

Virtually all the industry commenters pointed to potential problems in screening worn out and rebuilt engines from samples selected for recall testing, since they estimated that up to 30 percent of the engines might be rebuilt at 75 percent of useful life.

Finally, a number of commenters stated their opinion that there would be little or no air quality benefit from the full-life useful-life requirement. They therefore believed that full-life useful-life provisions would not be cost effective.

Legal questions regarding EPA's authority to establish full life were raised during the initial LDT and HDE rulemaking process. EPA concluded then, and still believes, that the language of the Act is consistent with the establishment of full-life useful-life periods for other-than light-duty vehicles. Nor is there any clear indication of Congressional intent to the contrary. EPA also rejects VW's argument on the basis of *International Harvester v. Ruckelshaus* (478 F. 2d 615 D.C. Cir. 1973), which removed LDTs from the LDV class for regulatory purposes, and placed them in the other-than-light-duty vehicles category, over which the Administrator has broad general regulatory authority. This general authority also is sufficient to enable the Administrator to establish reduced warranty periods for LDTs and HDEs. No specific prohibition to that effect is contained in the Act, despite the fact that Congress was clearly aware of the fact that reduced warranty periods are appropriate in certain cases and in fact established one such reduced period in the CAA Amendments of 1977. A more detailed discussion of EPA's legal position can be found in the "Summary and Analysis of Comments"[2] for both today's action and for the original HDE and LDT rulemakings.

EPA accepts the EMA suggestion for subdividing the HDD engine class on the basis of intended usage. This service application plan accomplishes the necessary goal of subdividing the HDDE class into subclasses that reflect the three generally recognized HDDE design categories, while at the same time allowing manufacturers and customers the maximum flexibility to match vehicles with the needs of the purchaser. The Agency does not feel the need to review all of the manufacturers' subclass determinations as EMA suggested, however. Rather, EPA feels that the classification system can be made "self-policing" by requiring engines to be labeled as to the subclass for which they are certified, to enable the consumer to choose an engine that satisfies his durability needs. It is of little concern to the Agency if a purchaser wishes to put a heavy-HDDE in his medium-duty truck, or a medium-HDDE in his long-haul tractor, as occasionally happens today within the industry. The labeling requirement is intended to assure, however, that the manufacturer does not artificially downgrade the classification of its engines to ease certification.

Regarding the issue of useful-life periods, a review of the data and comments which have been submitted suggests that some revisions are appropriate, particularly given the change in the method by which the HDDE subclasses are defined. Manufacturers have raised some valid points concerning the data and analysis techniques used in determining the assigned useful-life periods. In response to this, the periods for LDTs, HDGEs, and light- and medium-HDDEs have been reduced somewhat. In the latter instance the revised useful-life period is based on engine design characteristics for that subclass that were not fully reflected in the GVW-based calculation that formed the basis for the value originally proposed. It also follows from this change in HDD classification methodology that the assigned useful-life values for heavy-HDDEs must be revised upward to reflect the fact that this subclass will now be comprised almost exclusively of premium, long-haul engines. The revised useful-life periods are derived in the "Summary and Analysis of Comments"[2] and were set forth earlier in this Preamble.

EPA recognizes that the available data for useful-life determinations are far from perfect. Neither vehicle scrappage data nor surveys are able to unequivocally establish current useful-life periods. Moreover, the difficulties with these various data sets are not ones which can be easily remedied. Thus, the approach used has been to draw upon a wide variety of data from a number of sources and, bearing in mind the particular weaknesses of each, establish a consistent set of useful-life figures. It should also be pointed out that a manufacturer will still have the option of petitioning the Administrator for an alternative useful-life period if it finds a significant departure from the assigned value in the actual useful life of an individual engine family.

Regarding potential recall problems, EPA believes the concerns expressed by the manufacturers are overstated. There is as yet no heavy-duty recall program in existence, and it is likely to take some time to implement one. The Agency will work closely with the manufacturers in implementing a recall program, particularly in the area of screening engines for testing. EPA does not intend to include such things as rebuilt engines in any recall testing and procedures will be developed with the manufacturers' assistance to minimize the potential of such occurrences. As an example, the current LDT recall program allows manufacturers a full opportunity to challenge vehicle selections in an adjudicatory hearing.

Some HDE manufacturers argued that recall should apply only to add-on engine components installed solely or primarily for the purpose of emissions control. They believed that performance-related items would be kept in good repair through normal market forces (*e.g.*, increased fuel consumption or reduced power). EPA cannot accept the need to make such a distinction for recall purposes. If such forces are indeed acting effectively, then performance-related emission problems will not be found in significant numbers. If they are not, then it is appropriate for such areas to be coverd by recall. Moreover, the statute focuses on vehicles and engines exceeding standards, not just on problems caused by particular components.

Finally, a number of manufacturers have expressed doubts concerning the benefits versus the projected costs of full-life useful life. In response to these concerns, EPA has undertaken to update its full-life cost-effectiveness analysis, using manufacturer cost data and EPA air quality analysis techniques. The results of this study show full life to be very cost effective. The costs per ton of pollutant removed range from $230–505 per ton of HC, with the majority of the vehicle/engine classes falling in the lower end of the range, and $11–28 per ton for CO. The reader is referred to the chapter "Useful-Life Cost Effectiveness" in the Regulatory Support Document,[3] as well as Issue A.2 in the "Summary and Analysis of Comments,"[2] for more detail.

E. Revisions to Certification and Testing Requirements

1. *Allowable Maintenance.* The comments received agreed with EPA's proposal to establish a leaded fuel spark plug maintenance interval for HDGEs. In addition, one commenter requested that EPA provide leaded fuel maintenance intervals for a number of other components, including EGR. EPA's review of the technological basis for this request concluded that only the EGR interval would be needed. Therefore, EPA has also included a leaded fuel maintenance interval for EGR.

During the course of this rulemaking, an inquiry from the industry noted that the 1985 provisions no longer required an audible or visual signal to the owner as a condition for the manufacturer to recommend or conduct scheduled EGR maintenance. This provision is currently in place for LDTs and HDEs and was unintentionally omitted when the new allowable-maintenance provisions were promulgated in 1979. Provisions have been added to correct this omission.

Two commenters presented new data to support their claims that the turbocharger and injector allowable-maintenance intervals currently specified by EPA are longer than "technologically necessary." EPA has studied the data submitted by the commenters and also the significant changes in the HDDE market since the original maintenance intervals were promulgated in 1979. During the past three to four years, a significant number of HDDEs have been introduced which are targeted for heavy-duty vehicles with a GVW under 20,000 lbs. These engines are priced to compete with HDGEs and are not designed to have the same durability as HDDEs designed for larger trucks and buses. Therefore, EPA is revising the HDDE turbocharger and injector-maintenance intervals from 200,000 miles to 150,000 miles, as supported by the data submitted in the comments. See Issue B.4 in the "Summary and Analysis of Comments"[2] for further information.

2. *Idle CO Test and Standards.* In the NPRM, EPA solicited comments on the feasibility of the idle CO standard for HDGEs when catalytic converter technology is not used. EPA's original technological feasibility analysis was based on the use of catalysts, and given the limited experience of both EPA and the manufacturers with the idle CO test and standards, there was some uncertainty about the feasibility of the standard without catalysts.

Although several commenters did address the feasibility of the standard without catalysts, the major thrust of the comments was a strong objection to the idle test requirement. Manufacturers commenting on this issue claimed that the idle test was redundant due to the large amount of idle time in the transient emission test cycle and they also asserted that the idle CO requirement carried no air quality benefit.

EPA rejects both of the claims presented in the comments. First, time spent at idle during the transient test cycle does little to assure low idle emissions, since the emission standard for CO is on a mass per unit of work basis, and the mass flow at idle contributes little to the overall results of the test. This was demonstrated in the data and comments submitted by one HDGE manufacturer.

On the second point, it should be noted that one of the major air quality benefits of implementing the idle test requirement is the detection of failed (or disabled) catalytic converter emission control systems in-use, thus reducing the number of gross emitters.

EPA remains convinced that the idle CO requirement is appropriate for catalyst-equipped vehicles and engines, and will be a useful tool in the detection of failed and disabled catalytic converter-based emission control systems. Therefore, EPA believes it is appropriate to defer the idle CO requirement for HDGEs until more stringent emission standards requiring the use of catalytic converter technology take effect in 1987. At that time, catalytic converter equipped HDGEs will be required to meet the idle CO requirement. For a more detailed discussion of this subject, see Issue B.2 of the "Summary and Analysis of Comments."[2]

3. *Deterioration Factors.* Several comments claimed that the multiplicative DFs currently in effect for 1985 and later HDEs were no longer appropriate since aftertreatment control technology (catalytic converters) would no longer be required on HDGEs. At the time when multiplicative DFs were first promulgated in favor of additive DFs, EPA's analysis was not conclusive that one type of DF was preferable over another for HDEs not using aftertreatment control technology. However, that same analysis did conclude that multiplicative DFs are more representative of actual emission deterioration when aftertreatment control technology is used, since such technology reduces emissions on a proportional basis. Multiplicative DFs were adopted for HDGEs because catalytic converter technology was expected. Multiplicative DFs were also adopted for HDDEs to be consistent with HDGEs and light-duty diesel vehicles and trucks, since EPA's analysis did not conclude that additive DFs were more appropriate.

However, since HDGEs are not expected to use catalytic converter technology in 1985, EPA is revising the HDE DF requirements. In the future, HDEs using aftertreatment control technology will use multiplicative DFs and HDEs not using aftertreatment control technology will use additive DFs. Deterioration factors are discussed in Issue B.1 of the "Summary and Analysis of Comments".[2]

4. *Heavy-Duty Diesel Engine CO Standard.* Although no HDE manufacturer provided substantive comment on the proposed revision to the CO standard, several manufacturers requested that the requirement to measure CO be deleted, since HDDE CO emissions are substantially below even the statutory HDE CO standard. The comments noted that costs savings of approximately $20,000 per manufacturer per year would be possible, in addition to a slight increase in available laboratory test time.

EPA concurred with this request, and on November 2, 1982 (47 FR 49802), published provisions allowing the manufacturers to seek a waiver of the requirement to measure CO during formal HDDE certification testing. In lieu of this testing, manufacturers could demonstrate compliance through other test data or engineering analyses. These provisions will be continued for 1985 and later HDDEs. See Issue B.8 of the "Summary and Analysis of Comments"[2] for further discussion.

5. *Cold-Start Test Procedure Requirement for Heavy-Duty Diesel Engines.* Several HDDE manufacturers and EMA requested that EPA delete the cold-start portion of the HDDE transient test procedure. The manufacturers claimed that deleting the cold start would lead to a significant cost savings, because delays in development and certification testing would not be incurred while the engine returns to cold-start conditions. To support their request, the manufacturers cited test data to demonstrate that emissions from HDDEs are not sensitive to the cold-start requirement. Using this data, the commenters claimed that EPA could remove the cold-start portion of the transient test, without compromising the effectiveness of the test procedure.

EPA agrees with the manufacturers' claims that, in general, the results of the cold-start portion of the transient test for current HDDEs are not significantly different from the hot-start results. However, EPA is reluctant to remove the cold-start portion of the transient test

completely. Because some engines are more sensitive to the cold-start requirement, new engines are being introduced with unknown cold-start characteristics, and virtually all HDDEs are now undergoing some significant technological changes which will affect emissions performance *(e.g.,* electronic controls). In addition, particulate trap-oxidizers may be used on HDDEs in the future, and their cold-start characteristics are not well understood.

Therefore, to deal with the manufacturers' concerns while at the same time maintaining the integrity of the HDDE transient test, EPA has decided to allow the manufacturers to decide the importance of the cold-start portion of the transient test for each of their engine families. At the manufacturer's option, EPA will accept emission test data based only on the hot-start portion of the transient test for certification. However, the official HDDE certification test procedure will include both the cold- and hot-start portions, and EPA may use both portions in any confirmatory, recall, and SEA testing. Any manufacturer choosing to submit HDDE certification test data based only on the hot-start portion of the test procedure must accept for itself any liability associated with that decision. The cold-start test for HDDEs is discussed in Issue B.7 of the "Summary and Analysis of Comments".[2]

6. *HDE Trial Audits.* As the Agency announced in its January 12, 1983 final rule (48 FR 1406), SEA testing for HDEs has been deferred two years until the 1986 model year. One of the affected manufacturers proposed that the HDE/LDT regulations include a provision to allow for a reasonable phase-in period for trial test orders for HDE SEAs. As a result, the Agency will make its SEA personnel available, to the extent possible, to monitor trial HDE SEAs prior to the 1986 model year. Any HDE manufacturer that is interested in conducting a voluntary trial audit, pursuant to the provisions of Subpart K, may contact EPA in writing to make the appropriate arrangements. These trial audits are designed to provide both EPA and the manufacturer with logistical and procedural experience in running the new HDE SEA program. The Agency will not impose any of the sanctions contained in subpart K as a result of data generated during a trial audit. This issue is discussed in greater detail in Issue B.5 of the "Summary and Analysis of Comments" [2], "Minor Amendments to HDE/LDT SEA."

F. Minor Changes and Technical Amendments

In addition to comments received on the proposed changes to the regulations governing LDT and HDE SEA, EPA also received a number of requests for minor changes and amendments to the certification and emission test procedures. EPA had planned to implement some technical amendments to these regulations as more experience was gained with the certification provisions and test procedures, so the comments received were both timely and constructive.

A manufacturer commented to EPA that 2-stroke heavy-duty diesel engines are similar to turbocharged engines with respect to the method of inlet air induction, and thus should have been excluded from the closed crankcase requirements for naturally aspirated engines. EPA agrees with this observation, and makes this change to correct the oversight.

The number of minor changes and technical amendments being implemented here is too large to permit even a brief discussion of each. However, detail on each is provided in the pertinent portion of the "Summary and Analysis of Comments" [2]. The reader is referred to the public docket for additional background.

G. Environmental Impact

The impact of this rule on the nation's air quality was a topic of substantial comment. Many commenters (primarily environmental and public interest groups) were critical of the proposed rule on the grounds that it would not lead to the maximum possible air quality improvements. Others (primarily manufacturers) criticized the proposed rule as being more stringent than necessary.

Commenters opposing revision of the HDE emission standards maintained that these revisions posed an unnecessary threat to public health and welfare, and that the HC and CO reductions anticipated from the statutory standards are necessary if areas which are either marginal or in nonattainment status are to be brought into compliance. These commenters also noted that control of HC and CO emissions from HDEs had previously been found to be cost effective by EPA and the National Commission on Air Quality, and that neither had provided information to reverse that position. Specifically, comments received from NRDC cited numerous studies and reports stressing the need for further control of HDE emissions and criticized EPA for its slow progress in requiring further control of HDE emissions. In their comments of EPA's split-class proposal for control of HDGEs, NRDC asserted that Classes IIB and III trucks should be required to meet the statutory HC and CO emission standards as soon as possible to minimize any further losses in possible air quality improvements.

Comments received which supported further revision stated that EPA had overestimated the urban air quality impact of controlling HDEs, and argued that further control was simply not cost effective. Several commenters attacked various aspects of EPA's emission factors for HDEs, claiming that the current emission factors significantly overstated the HDE emission rates and therefore the impact of HDEs on urban air quality. Several commenters noted that the use of HDDEs in all GVW class trucks was expected to increase through the decade of the 1980s and argued that the inherently lower HC and CO emissions from diesel engines would soften the need to demand stringent emission control from the remaining HDGEs.

Clearly, the revised HDE emission regulations being promulgated here will not provide the same emission control benefits as those anticipated in the original rule. However, the emission standards and regulations being promulgated here are as stringent as available considering concerns such a leadtime, costs, technological feasibility and fuel economy effects. The HDDE emission standards and regulations are being retained with only minor revisions. Even though the HDGE emission standards are being temporarily revised, the majority of HDGEs will be meeting the statutory standards beginning in 1987. The changes in the emission test procedure will not compromise its stringency as compared to EPA's transient test for HDGEs.

EPA also notes that several of the points raised by the manufacturers are valid concerns. Issues such as the precise amount of the urban air quality impact of HDEs and the accuracy of the HDE emission factors are worthy of pursuit, and EPA agrees that improvements in the accuracy of the air quality projections will always be possible. However, EPA does not believe that any of the points raised are significant enough to justify a delay in the rulemaking (which would definitely have an adverse environmental impact). None of these matters would be expected to change the current air quality projections enough to alter the course of this rulemaking.

H. Separate Standards for Heavy-Duty Gasoline Engines and Heavy-Duty Diesel Engines

During the course of the rulemaking, EPA sought comment on the question of setting the emission standards (HC and CO) at different levels for HDGEs and HDDEs. From the comments received at the public hearing, it was evident that HDDEs could meet the statutory standards at little cost, while HDGEs could have trouble meeting even the revised standards proposed by EPA. Seven HDE manufacturers and one trade association commented on this issue.

The commenters generally took position either for or against separate standards. The one trade association which commented took no position, but suggested that EPA make another proposal for comment.

Those manufacturers which produce only HDDEs supported the separate-standards approach and agreed with EPA that the technological capability dictated by engine type is an appropriate determinant in setting emission standards. However, at the same time each of these manufacturers requested that similar consideration be given in the setting of future HDE NO_x and particulate emission standards.

Those manufacturers who are expected to produce HDGEs in 1985 opposed the separate-standards approach for three reasons: Competitive effects, statutory intent, and EPA precedent. On the first point, the manufacturers were concerned that a separate-standards approach may place one engine type at a competitive disadvantage as a result of more stringent emission standards. Even though the more stringent standards may be technologically feasible, they argued that the costs of compliance may be large enough to place the lower emitting engine at a competitive disadvantage with the other engine type which is emitting at a higher level. Second, those opposing the separate-standards approach cited portions of the House and Senate Committee Reports which accompanied the 1977 Clean Air Act Amendments. The commenters claimed that the text of these reports indicated that separate standards were not intended. Third, the commenters noted that EPA had never before set separate standards, and EPA had previously taken the position that separate standards were not appropriate for HDE NO_x. The commenters asserted that the arguments put forth supporting a uniform HDE NO_x standard were also applicable to HC and CO.

EPA believes that the separate-standards approach is appropriate and consistent with the final provisions of the Act as amended in 1977. EPA acknowledges the commenters' concerns about competitive effects and believes that separate standards should be implemented with caution to guard against such problems. However, EPA notes that HDDEs, which will be meeting more stringent HC and CO standards than HDGEs, can do so for less total cost. Secondly, EPA disagrees with the commenters' claims that the Act disallows the setting of separate standards. There is no evidence that either the Senate or House Committee's position on separate standards was ever endorsed by the Conference Committee, nor was that position written into law. On the contrary, the actual wording of the Act confers broad authority on EPA in this area. On the third point, EPA precedent, several facts are worth noting. First, even though separate standards have never been set for HDE HC, CO, or NO_x, EPA notes that a type of separate standards has been in place for years in the form of smoke standards which apply to HDDEs only. Also, the use of separate standards has recently been extended to cover evaporative HC and idle CO emissions from HDGVs and HDGEs. With regard to the EPA position outlined in the LDT/HDE NO_x ANPRM, those statements did not reflect a final Agency policy statement, but indicated a preliminary EPA position on the single- vs. separate-standards issue for HDE NO_x, published for public comment in an ANPRM. That position was clearly subject to change as is Agency policy in general. This is especially true when circumstances and conditions change or when new regulations arise. It is in this light that EPA has considered the issue of split standards for HDE HC and CO.

Given that section 202(a)(3)(A)(iv) of the Act gives EPA the authority to set separate standards and section 202(a)(3)(C)(i) compels that the emission standards be set at levels as stringent as reasonably possible, EPA is implementing separate standards for HDGEs and HDDEs. No competitive disadvantage will ensue from this action, since costs for HDDEs to meet the statutory standards will probably be less than costs for HDGEs to meet the revised standards. In addition, the majority of HDGEs will still be required to meet the statutory standards, although admittedly two years later than for HDDEs. Overall then, EPA believes that setting separate standards in this unique situation is good public policy. The issue of separate standards for HDGEs and HDDEs is discussed in more detail in Issue B.6 of the "Summary and Analysis of Comments."[2]

I. Potential Impacts on Specific Manufacturers

Even with the revisions proposed in the NPRM, two HDGE manufacturers (Chrysler and International Harvester (IH)) claimed that the new emission control requirements would have a significant impact on their operations and might be a factor is their decisions to abandon the HDGE market.

In its initial submittal, Chrysler indicated that it would probably leave the HDGE market when compliance with the new emission-control requirements became necessary. Chrysler's position at that time was based on the belief that the potential profitability of the HDGE market did not justify the use of its scarce capital resources for new test facilities and the development of emission-control systems. To stay in the market, Chrysler requested a "small-volume waiver" which would permit it to continue certification using the steady-state test.

International Harvester stated that given its current financial difficulties and the anticipated reduction in demand for HDGEs, it would leave the market whenever the new emission-control requirements were implemented. With the decision to leave the market apparently already made, the model year of implementation for the new regulations was IH's major concern. IH requested that the new regulations be deferred until 1985 to allow them an orderly withdrawal from the market.

In subsequent comments submitted by Chrysler, it reversed its initial position and is now preparing to remain in the market. This change was apparently precipitated by the turnaround in Chryler's financial situation since the NPRM, and the stabilization in gasoline prices, presumably leading to an acceptable level of demand for Chrysler's HDGEs. These regulations are being implemented for 1985, which will allow leadtime for Chrysler to comply with the new regulations and enable IH to produce HDGEs until the end of 1984, as desired.

Given that Chrysler has decided to remain in the HDGE market and that IH's decision to withdraw from the market is not based on the effects of these regulations, EPA concludes that these regulations will not be a factor in either manufacturer's decision to continue producing HDGEs. More discussion on this subject may be found in Issue B.10 of the "Summary and Analysis of Comments".[3]

VII. Authority

As noted throughout this preamble, today's action is based on a number of provisions in Titles II and III of the Clean Air Act. These include the authority to establish heavy-duty emission standards in Section 202(a)(3) of the Act, and particularly the authority to revise those standards under paragraphs (a)(3) (B) and (C) of that section. Based on the analysis in this preamble and the supporting documents, EPA finds that compliance with the emission standards that would apply but for these revisions cannot be achieved by technology available for those model years, without increasing cost to an excessive and unreasonable degree. The revised standards in today's action, as discussed earlier, represent the maximum degree of emission reduction which EPA believes can be achieved by means reasonably expected to be available for production during the periods for which revised standards apply.

The reader is referred to the January 12, 1983, final rule for a more detailed discussion of the provisions for revising heavy-duty standards (48 FR 1411). The only challenge by commenters in this rulemaking to EPA's authority to revise the standards concerns the requirement that EPA provide four years leadtime before implementing revised standards. As discussed previously, EPA believes it has satisfied that requirement. One commenter also noted that EPA could not permanently revise standards for the heaviest HDGEs under this authority, and, as discussed earlier, EPA agreed.

Other sources of statutory authority from which EPA has drawn in promulgating these rules include: Sections 202(a) (1) and (2), providing general authority to promulgate emission standards (standards for LDTs were set under this authority); Section 202(a)(3)(A)(iv), providing the authority to establish classes or categories of heavy-duty engines; Section 202(d)(2), providing the authority to establish appropriate useful-life periods for LDTs and HDEs; Section 206, conferring authority, among other things, to certify vehicles and engines under specified test procedures and to test assembly-line vehicles and engines; Section 207, establishing in-use requirements, including warranty, recall, maintenance and use, and labeling; Section 208, providing authority to establish requirements for reporting, recordkeeping, and information gathering; and Section 301(a), conferring general rulemaking authority to implement statutory requirements.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it involves no negative cost impacts and has no significant adverse effects on competition, productivity, investment, employment, or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Effect on Small Entities

Section 605 of the Regulatory Flexibility Act requires the Administrator to certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have such an effect because it primarily affects only motor vehicle engine manufacturers, a group which does not include a substantial number of small entities. Also, the primary effect of this action is to provide regulatory relief, so no private parties should see any substantial adverse impact.

Information Collection Requirements

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq. and have been assigned OMB Control Numbers 2000–0390.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 25, 1983.

Alvin L. Alm,

Acting Administrator.

PART 86—[AMENDED]

For the reasons set forth in the Preamble, Part 86 of Title 40 of the *Code of Federal Regulations* is amended as set forth below:

Authority: Secs. 202, 206, 207, 208, 301a, Clean Air Act as amended; 42 U.S.C. 7521, 7525, 7541, 7542, 7601a.

Subpart A—[Amended]

1. Section 86.084–9 of Subpart A is amended by revising paragraphs (a)(1)(ii)(B) and (f) and adding a new paragraph (h), to read as follows:

§ 86.084–9 Emission standards for 1984 and later model year light-duty trucks.

(a)(1) * * *

(ii) * * *

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled vehicles only).

* * * * *

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1984 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location.

* * * * *

(h) Manufacturers choosing to certify using the half-life useful-life option as defined in § 86.084–2, which is available only for the 1984 model year, are restricted to using only the certification procedures applicable for the 1983 model year, with the exception of the determination of idle CO deterioration factors as noted in § 86.084–23(b)(3).

2. Section 86.084–10 of Subpart A is amended by revising paragraph (a)(1)(ii)(B), to read as follows:

§ 86.084–10 Emission standards for 1984 and later model year gasoline-fueled heavy-duty engines.

(a)(1) * * *

(ii) * * *

(B) 0.50 percent of the exhaust gas flow at curb idle.

* * * * *

3. Section 86.084–11 of Subpart A is amended by revising paragraph (c), to read as follows:

§ 86.084–11 Emission standards for 1984 and later model year diesel heavy-duty engines

* * * * *

(c) No crankcase emissions shall be discharged into the atmosphere from any new 1984 model year naturally aspirated diesel heavy-duty engine. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

* * * * *

4. Section 86.084–28 of Subpart A is amended by revising paragraphs (c)(4)(ii) and (c)(4)(iii), to read as follows:

§ 86.084–28 Compliance with emission standards.

* * * * *

(c) * * *

(4) * * *

(ii) Separate exhaust emission deterioration factors, determined from tests on engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline-fueled and diesel engines, separate factors shall be established for transient HC, CO, and NO_x. For gasoline-fueled engines utilizing

aftertreatment technology (e.g., catalytic converters), a separate factor shall be established for idle CO. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C").

(iii)(A) Paragraph (c)(4)(iii)(A) of this section applies to gasoline-fueled heavy-duty engines.

(*1*) *Gasoline-fueled heavy-duty engines not utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, and for idle CO, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel heavy-duty engines.

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Diesel heavy-duty engines utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(*3*) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

* * * * *

5. Section 86.084–35 of Subpart A is amended by revising paragraphs (d)(2), (d)(3) and (f) to read as follows:

§ 86.084–35 Labeling.

* * * * *

(d) * * *

(2) The subordinate addition to the statement in paragraph (d)(1) of this section: "This vehicle's actual life may vary depending on its service application. (For additional information see the owner's maintenance instructions.) This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks when installed in a vehicle completed at a curb weight of not more than ———— pounds or with a frontal area not greater than ———— square feet for its useful life."

(3) For incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks whose useful-life period is determined by the assigned useful-life period option as described in § 86.084–2, the following statement shall be printed on the label required in paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(H) of this section: "This vehicle conforms to U.S. EPA Regulations Applicable to 19—— Model Year New Motor Vehicles When Completed at a Maximum Curb Weight of ———— pounds and a Maximum Frontal Area of ———— Square Feet." These vehicles need not comply with the labeling requirements in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

6. Section 86.085–2 of Subpart A is amended by removing the designation (a) from the introductory text and adding new definitions to read as follows:

§ 86.085–2 Definitions.

* * * * *

"Primary intended service class" means:

(a) The primary service application group for whch a heavy-duty diesel engine in designed and marketed, as determined by the manufacturer. The primary intended service classes are designated as light, medium, and heavy heavy-duty diesel engines. The determination is based on factors such as vehicle GVW, vehicle usage and operating patterns, other vehicle design characteristics, engine horsepower, and other engine design and operating characteristics.

(1) Light heavy-duty diesel engines usually are non-sleeved and not designed for rebuild; their rated horsepower generally ranges from 70 to 170. Vehicle body types in this group might include any heavy-duty vehicle built for a light-duty truck chassis, van trucks, multi-stop vans, recreational vehicles, and some single axle straight trucks. Typical applications would include personal transportation, light-load commercial hauling and delivery, passenger service, agriculture, and construction. The GVWR of these vehicles is normally less than 19,500 lbs.

(2) Medium heavy-duty diesel engines may be sleeved or non-sleeved and may be designed for rebuild. Rated horsepower generally ranges from 170 to 250. Vehicle body types in this group would typically include school buses, tandem axle straight trucks, city tractors, and a variety of special purpose vehicles such as small dump trucks, and trash compactor trucks. Typical applications would include commercial short haul and intra-city delivery and pickup. Engines in this group are normally used in vehicles whose GVWR varies from 19,500–33,000 lbs.

(3) Heavy heavy-duty diesel engines are sleeved and designed for multiple rebuilds. Their rated horsepower generally exceeds 250. Vehicles in this group are normally tractors, trucks, and buses used in inter-city, long-haul applications. These vehicles normally exceed 33,000 lbs GVWR.

"Useful life" means:

(a) For light-duty vehicles a period of use of 5 years or 50,000 miles, whichever first occurs.

(b) For a light-duty truck engine family, a period of use of 11 years or 120,000 miles, whichever occurs first.

(c) For a gasoline-fueled heavy-duty engine family, a period of use of 8 years or 110,000 miles, whichever first occurs.

(d) For a diesel heavy-duty engine family:

(1) For light heavy-duty diesel engines, a period of use of 8 years or 110,000 miles, whichever first occurs.

(2) For medium heavy-duty diesel engines, a period of use of 8 years or 185,000 miles, whichever first occurs.

(3) For heavy heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever first occurs.

(e) As an option for both light-duty truck and heavy-duty engine families, an alternative useful life period assigned by the Administrator under the provisions of paragraph (f) of § 86.085–21.

(f) The useful-life period for purposes of the emissions defect warranty and emissions performance warranty shall be a period of 5 years/50,000 miles whichever first occurs, for light-duty trucks, gasoline heavy-duty engines, and light heavy-duty diesel engines. For all other heavy-duty diesel engines the aforementioned period is 5 years/100,000 miles, whichever first occurs. However, in no case may this period be less than the manufacturer's basic mechanical warranty period for the engine family.

7. Section 86.085–9 of Subpart A is amended by revising paragraph (a((1)(ii)(B) to read as follows:

§ 86.085–9 Emission standards for 1985 and later model year light-duty trucks.

(a)(1) * * *

(ii) * * *

(B) *Gasoline-fueled vehicles.* 0.05 percent of exhaust gas flow at curb idle (gasoline-fueled vehicles only).

* * * * *

8. Section 86.085–10 of Subpart A is amended by revising paragraphs (a)(1)(i) through (iii), (a)(2), (a)(3), (b)(1) and (b)(2) and by adding a new paragraph (b)(3) to read as follows:

§ 86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) * * *

(i) *Hydrocarbons.* (A) 1.9 grams per brake horsepower-hour, as measured under the transient operating conditions set forth in paragraph (f)(1) of Appendix I to this part, or,

(B) 2.5 grams per brake horsepower-hour, as measured under the transient operating conditions set forth in paragraph (f)(3) of Appendix I to this part.

(ii) *Carbon monoxide.* (A)*(1)* 37.1 grams per brake horsepower-hour, as measured under the transient operating conditions set forth in paragraph (f)(1) of Appendix I to this part, or,

(2) 40.0 grams per brake horsepower-hour, as measured under the transient operating conditions set forth in paragraph (f)(3) of Appendix I to this part.

(B) [Reserved]

(iii) *Oxides of nitrogen.* (A) 10.6 grams per brake horsepower-hour, as measured under the transient operating conditions set forth in paragraph (f)(1) of Appendix I to this part, or,

(B) 10.7 grams per brake horsepower-hour, as measured under the transient operating conditions set forth in paragraph (f)(3) of Appendix I to this part.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules set forth in Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subparts N or P.

(3)(i) A manufacturer shall select to certify its gasoline-fueled heavy-duty engines using either the operating schedule set forth in paragraph (f)(1) of Appendix I to this part and the emission standards set forth in paragraphs (a)(1)(i)(A), (a)(1)(ii)(A)*(1)*, and (a)(1)(iii)(A) of this section or, the operating schedule set forth in paragraph (f)(3) of Appendix I to this part and the emission standards set forth in subparagraphs (1)(i)(B), (1)(ii)(A)*(2)*, and (1)(ii)(B) of this paragraph.

(ii) All of a manufacturer's gasoline-fueled heavy-duty engine families shall be certified using the same operating schedule and emission standards.

(iii) All official testing of a manufacturer's gasoline-fueled heavy-duty engine families conducted by EPA shall be conducted using the operating schedule and emission standards selected by that manufacturer at the time of certification.

(b)(1) Evaporative emissions from 1985 and later model year gasoline-fueled heavy-duty vehicles, except as noted in paragraph (b)(3) of this section, shall not exceed:

(i) *Hydrocarbons.* (A) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds, 3.0 grams per test.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds, 4.0 grams per test.

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of fuel evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with these procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standards set forth in paragraph (b)(1)(i)(B) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.085–23(b)(4)(ii)).

(3) Model year 1985 heavy-duty vehicles equipped with model year 1984 gasoline-fueled heavy-duty engines shall not be required to comply with the evaporative emission standards set forth in paragraphs (1) and (2) of this section, nor with the related requirements set forth elsewhere in this subpart.

* * * * *

9. Section 86.085–11 of Subpart A is amended by revising paragraphs (a)(1)(i) through (iii), (a)(2), (c) and (d) to read as follows:

§ 86.085–11 Exhaust emissions from new 1985 and later model year diesel heavy-duty engines.

(a)(1) * * *

(i) *Hydrocarbons.* 1.3 grams per brake horsepower-hour, as measured under transient operating conditions.

(ii) *Carbon monoxide.* 15.5 grams per brake horsepower-hour, as measured under transient operating conditions.

(iii) *Oxides of nitrogen.* 10.7 grams per brake horsepower-hour, as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(2) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subpart N of this part, except as noted in § 86.085–23(c)(2)(i) and (ii).

* * * * *

(c) No crankcase emissions shall be discharged into the atmosphere from any new 1985 model year naturally aspirated diesel heavy-duty engine. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) of this section.

10. Section 86.085–21 of Subpart A is amended by revising paragraph (b)(4)(iii)(A), revising paragraphs (b)(4)(iii)(B) and (C), and adding new paragraphs (b)(4)(iii)(D) and (f) to read as follows:

§ 86.085–21 Application for certification.

* * * * *

(b) * * *

(4) * * *

(iii)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.085–23(b)(1).

(B)(*1*) For engine families provided an alternative useful life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(*2*) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(C)(*1*) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(*2*) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(D) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

* * * * *

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.085–2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request, together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation.

11. Section 86.085–22 of Subpart A is amended by revising paragraphs (d)(2) and (e)(1)(i), and adding a new paragraph (e)(1)(iv), to read as follows:

§ 86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.

* * * * *

(d) * * *

(2) *Light-duty trucks and heavy-duty engines only.* The Administrator does not approve the test procedures for establishing exhaust emission deterioration factors. The manufacturer shall submit these procedures and determinations as required in § 86.085–21(b)(4)(iii) prior to determining the deterioration factors.

* * * * *

(e) * * *

(1)(i) Except as noted in paragraph (e)(1)(iv) of this section, the Administrator may determine to be subject to adjustment the idle fuel-air mixture parameter on gasoline-fueled vehicles (or engines) (carbureted or fuel injected); the choke valve action parameter(s) on any vehicle (or engine) (diesel or gasoline-fueled) which is physically capable of being adjusted, may significantly affect emissions, and was not present on the manufacturer's vehicles (or engines) in the previous model year in the same form and function.

* * * * *

(iv) Manual chokes of heavy-duty engines only will not be considered a parameter subject to adjustment under the parameter adjustment requirements.

* * * * *

12. Section 86.085–23 of Subpart A is amended by correcting paragraphs (b)(1)(ii) and (b)(2), redesignating paragraph (c)(2) as paragraph (c)(2)(i), and adding a new paragraph (c)(2)(ii) to read as follows:

§ 86.085–23 Required data.

* * * * *

(b)(1) * * *

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.085–21(b)(4)(iii)(A) as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.085–30 will meet the emission standards in § 86.085–9, § 86.085–10, or § 86.085–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.085–21(b)(4)(i). designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.085–30 will meet the evaporative emission standards in § 86.085–8 or § 86.085–9, as appropriate, for the useful life of the vehicle.

* * * * *

(c) * * *

(2) *Certification engines.* (i) Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.082–26(b)(5). In lieu of providing emission data on CO emissions from diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the CO emission standard of § 86.085–11.

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with Subpart N, when making application for certification. However, for confirmatory, SEA, and recall testing by the Agency, both the cold-start and hot-start test data, as specified in Subpart N, will be included in the official results.

* * * * *

13. A new § 86.085–25 is added to Subpart A, to read as follows:

§ 86.085–25 Maintenance.

(a) *Light-duty vehicles.* Paragraph (a) of this section applies to light-duty vehicles.

(1) Scheduled maintenance on the engine, emission control system, and fuel system of durability-data vehicles, selected by the Administrator or elected by the manufacturer under § 86.084–24(c)(1), shall be scheduled for performance during durability testing at the same mileage intervals that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle. This maintenance schedule may be updated as necessary throughout the durability-data vehicle's testing provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle. Such maintenance shall be performed, except as provided in paragraph (a)(5)(iii) of

this section, only under the following provisions:

(i) Scheduled major engine tuneups to manufacturer's specifications may be performed no more frequently than every 12,500 miles of scheduled driving: Provided that no tuneup may be performed after 45,000 miles of scheduled driving. A scheduled major engine tuneup shall be restricted to paragraph (a)(1)(i) (A) or (B) of this section, and shall be conducted in a manner consistent with service instructions and specifications provided by the manufacturer for use by customer service personnel.

(A) *For gasoline-fueled vehicles,* the following items may be inspected, replaced, cleaned, adjusted, and/or serviced as required:

(*1*) Ignition system.

(*2*) Cold starting enrichment system (includes fast idle speed setting).

(*3*) Curb idle speed and air/fuel mixture.

(*4*) Drive belt tension on engine accessories.

(*5*) Value lash.

(*6*) Inlet air and exhaust gas control valves.

(*7*) Engine bolt torque.

(*8*) Spark plugs.

(*9*) Fuel filter and air filter.

(*10*) Crankcase emission control system.

(*11*) Fuel evaporative emission control system.

(B) *For diesel vehicles,* a major engine tuneup shall be restricted to the following:

(*1*) Adjust low idle speed.

(*2*) Adjust valve lash if required.

(*3*) Adjust injector timing.

(*4*) Adjust governor.

(*5*) Clean and service injector tips.

(*6*) Adjust drive belt tension on engine accessories.

(*7*) Check engine bolt torque and tighten as required.

(ii) Change of engine and transmission oil, and change or service of oil filter will be allowed at the same mileage intervals that will be specified in the manufacturer's maintenance instructions.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, in addition to adjustment during scheduled major engine tuneups, once during the first 5,000 miles of vehicle operation.

(2)(i) *For gasoline-fueled vehicles,* unscheduled maintenance on the engine, emission control system, and fuel system of durability vehicles may be performed, except as provided in paragraph (a)(5)(i) of this section, only under the following provisions:

(A) Any persistently misfiring spark plug may be replaced, in addition to replacement at scheduled major engine tuneup points.

(B) Readjustment of the engine cold starting enrichment system may be performed if there is a problem of stalling or if there is visible black smoke.

(C) Readjustment of the engine idle-speed (curb idle and fast idle) may be performed, in addition to that performed as scheduled maintenance under paragraph (a)(1) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(D) The idle mixture may be reset, other than during scheduled major engine tuneups, only with the advance approval of the Administrator.

(ii) *For diesel vehicles,* unscheduled maintenance on the engine emission control system, and fuel system of durability-data vehicles may be performed, except as provided in paragraph (a)(5)(i) of this section, only under the following provisions:

(A) Injectors may be changed if a persistent misfire is detected.

(B) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (a)(1) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(3) An exhaust gas recirculation (EGR) system may be serviced during durability testing only under one of the following provisions:

(i) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup, if an audible and/or visible signal approved by the Administrator alerts the vehicle operator to the need for EGR system maintenance at each of those mileage points. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(ii) Manufacturers may service the EGR system a maximum of three times during the 50,000 miles either at a scheduled major engine tuneup point or as unscheduled maintenance, if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for EGR system maintenance. The signal may be activated either by EGR system failure (unscheduled maintenance) or need for scheduled periodic maintenance. If maintenance is performed, the signal for scheduled periodic maintenance shall be reset. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(iii) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup(s) if failure to perform EGR system maintenance is not likely, as determined by the Administrator, to result in an improvement in vehicle performance. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(4) The catalytic converter may be serviced once during 50,000 miles if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for maintenance. The signal may be activated either by component failure or need for maintenance at a scheduled point.

(5) Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on durability-data vehicles shall be performed only with the advance approval of the Administrator.

(i) In the case of unscheduled maintenance, such approval will be given if the Administrator:

(A) Has made a preliminary determination that part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle unrepresentative of vehicles in use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and

(B) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, vehicle stalling, overheating, fluid leakage, loss of oil pressure, or charge indicator warning. For the evaporative emission control system this overt indication may be indicated by such items as fuel odor or fluid leakage.

(ii) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (a)(5)(i) of this section except under the conditions outlined in paragraph (a)(5)(ii)(A) of this section.

(A) *Conditions for unscheduled maintenance based upon emission*

results: The Administrator may approve unscheduled maintenance on durability-data vehicles based upon a significant change in emission levels that indicates a vehicle malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action if the Administrator determines that:

(*1*) The malfunction was caused by nonproduction build practices or by a previously undetected design problem,

(*2*) The malfunction will not occur in production vehicles in use, *and*

(*3*) The deterioration factor generated by the durability-data vehicle will remain unaffected by the malfunction or by the corrective action (e.g., the malfunction was present only a short period of time before detection, replacement parts are functionally representative of the proper mileage, etc.).

(B) Following any unscheduled maintenance approved under paragraph (a)(5)(ii)(A) of this section, the manufacturer shall perform an after-maintenance emissions test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability-data vehicle.

(iii) Requests for authorization of scheduled maintenance of emission control-related components not specifically authorized to be maintained by these regulations must be made prior to the beginning of durability testing. The Administrator will approve the performance of such maintenance if the manufacturer makes a satisfactory showing that the maintenance will be peformed on vehicles in use.

(6) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle unrepresentative of vehicles in use, the vehicle shall not be used as a durability-data vehicle.

(7) Where the Administrator agrees under § 86.084–26 to a mileage accumulation of less than 50,000 miles for durability testing, he may modify the requirements of this paragraph.

(8)(i) Adjustment of engine idle speed on emission-data vehicles may be performed once before the 6,436-kilometer (4,000-mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission-data vehicles shall be performed only with the advance approval of the Administrator.

(ii) [Reserved]

(iii) [Reserved]

(9) Repairs to vehicle components of the durability-data or emission-data vehicle, other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(10) Complete emission tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability-data vehicles. The manufacturers may perform emissions tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification. In addition, all test data and maintenance reports shall be compiled and provided to the Administrator concurrently in accordance with § 86.084–23.

(11) The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle malfunction (e.g., misfiring, stalling, black smoke), or an activation of an audible and/or visual signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(12) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and,

(i) Are used in conjunction with scheduled maintenance on such components,

(ii) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (a)(5)(i) of this section for durability-data vehicles or paragraph (a)(8)(i) of this section for emission-data vehicles, or

(iii) Unless specifically authorized by the Administrator.

(b) *Light-duty trucks and heavy-duty engines.* Paragraph (b) of this section applies to light-duty trucks and heavy-duty engines.

(1) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components used to determine exhaust emission deterioration factors must be technologically necessary for compliance with the standards in actual use. All emission-related *scheduled* maintenance must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle.

(i) The manufacturer must submit data to the Administrator which demonstrates that all of the emission-related scheduled maintenance which is to be performed on the durability-data vehicles is technologically necessary. EPA has determined that emission-related maintenance at shorter intervals than that outline in paragraphs (b)(1)(ii) and (b)(1)(iii) is not technologically necessary. The Administrator may determine that even maintenance more restrictive (e.g., longer intervals) than that listed in paragraphs (b)(1)(ii) and (b)(1)(iii) is not technologically necessary.

(ii) For gasoline-fueled vehicles or engines, emission-related maintenance in addition to or at shorter intervals than that listed below will not be accepted as technologically necessary, except as provided in paragraph (b)(1)(iv).

(A) (*1*) The cleaning or replacement of light-duty truck spark plugs at 30,000 miles of use and at 30,000-mile intervals thereafter.

(*2*) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 12,000 miles (or 360 hours) of use and at 12,000-mile (or 360-hour) intervals thereafter, for engine certified for use with leaded fuel.

(*3*) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 25,000 miles (or 750 hours) of use and at 25,000-mile intervals (or 750-hour) intervals thereafter, for engines certified for use with unleaded fuel only.

(B) The inspecting, cleaning, adjustment, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(*1*) Positive crankcase ventilation and exhaust gas recirculation valves.

(*2*) Emission-related hoses and tubes.

(*3*) Ignition wires.

(*4*) Oxygen sensor.

(*5*) Idle mixture.

(C) The replacement of the catalytic converter or inspecting and cleaning of the injector tips at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter.

(D)(*1*) For heavy-duty engines certified for use with leaded fuel, the servicing of the exhaust gas recirculation (EGR) system at 24,000 miles (or 720 hours) of use and at 24,000-mile (or 720-hour) intervals thereafter.

(*2*) For heavy-duty engines certified for use with unleaded fuel only, the servicing of the EGR system at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(E) Manufacturers may schedule service to the EGR system at the intervals indicated in paragraphs (b)(1)(ii) (B) and (D) above, only if an audible and/or visible signal, approved by the Administrator, alerts the engine operator to the need for EGR system maintenance at each of those mileage points.

(iii) For diesel vehicles or engines, emission-related maintenance in addition to or at shorter intervals than that listed below will not be accepted as technologically necessary, except as provided in paragraph (b)(1)(iv) of this section.

(A) The following maintenance at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(*1*) Cleaning or replacement of the exhaust gas recirculation and positive crankcase ventilation valves;

(*2*) Cleaning of injector tips.

(B) The cleaning, rebuilding, or replacement of the turbocharger and injectors at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter for light-duty trucks, or at 150,000 miles (or 4,500 hours) of use and at 150,000-mile (or 4,500-hour) intervals thereafter for heavy-duty engines.

(C) Manufacturers may schedule service to the EGR system at the intervals indicated in paragraph (b)(1)(iii)(A) above, only if an audible and/or visible signal, approved by the Administrator, alerts the engine operator to the need for EGR system maintenance at each of those mileage points.

(iv) Requests for authorization of scheduled maintenance of emission control related components in addition to those items of maintenance covered under paragraphs (b)(1)(ii) and (b)(1)(iii) of this section will be considered if the maintenance is a direct result of the implementation of new technology. New technology means any technology not found in production on any motor vehicle prior to the 1980 model year.

(v)(A) Only the maintenance items listed in paragraphs (b)(1)(i) and (b)(1)(ii) are currently considered by EPA to be emission-related maintenance. The Administrator may, however, determine additional maintenance items to be emission-related by announcement in a **Federal Register** notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(B) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(1)(v)(A) of this section. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(vi) [Reserved].

(vii) Non-emission related vehicle maintenance which is reasonable and necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, accessory belt inspection, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data vehicles at the intervals recommended by the manufacturer to the ultimate purchaser.

(viii) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraph (b)(1)(ix)(A) of this section, only under the following provisions:

(A) An injector or spark plug may be changed if a persistent misfire is detected.

(B) Readjustment of a gasoline-fueled vehicle or engine cold-start enrichment system may be performed if there is a problem of stalling.

(C) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(ix) Any other unscheduled vehicle, engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed only with the advance approval of the Administrator.

(A) Such approval will be given if the Administrator:

(*1*) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(*2*) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss.

(B) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (b)(1)(ix)(A) of this section except under the conditions outlined in paragraph (b)(1)(ix)(B)(*1*) of this section.

(*1*) *Conditions for unscheduled maintenance based upon emission results:* The Administrator may approve unscheduled maintenance on durability-data vehicles or engines based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action if the Administrator determined that:

(*i*) The malfunction was caused by nonproduction build practices or by a previously undetected design problem,

(*ii*) The malfunction will not occur in production vehicles or engines in use, *and*

(*iii*) The deterioration factor generated by the durability-data vehicle or engine will remain unaffected by the malfunction or by the corrective action (e.g., the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(*2*) Following any unscheduled maintenance approved under paragraph

(b)(1)(ix)(B)(*1*) of this section, the manufacturer shall perform an after-maintenance emissions test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability-data vehicle or engine.

(x) [Reserved].

(2) [Reserved].

(3)(i) Scheduled maintenance on emission-data vehicles (or engines) is limited to the adjustment of idle speed once before the low-mileage test point (or the low-hour test point for engines), provided the idle speed is outside the manufacturer's specifications.

(ii) [Reserved].

(iii) [Reserved].

(iv) Any other engine, emission control system, or fuel system, adjustment, repair, removal, disassembly, cleaning, servicing, or replacement shall be performed only with the advance approval of the Administrator.

(4) *Light-duty trucks.* Repairs to vehicle components of the emission-data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(5)(i) Complete emission tests (see Subparts B and P of this part) are required, unless waived by the Administrator, before and after catalytic converter or oxygen sensor servicing on any vehicle.

(ii) The Administrator may require emission tests before and after any unscheduled maintenance.

(iii) [Reserved].

(iv) Test data required by paragraph (b)(5) of this section shall be air posted or delivered to the Administrator within 7 working days, along with a complete record of all pertinent maintenance.

(v) When unscheduled maintenance is approved, a preliminary engineering report, unless waived by the Administrator, shall be air posted or delivered within 7 working days. A final engineering report shall be completed and delivered to the Administrator, concurrently with the manufacturer's application for certification.

(vi) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.084–23.

(6) The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or engine malfunction (e.g., misfiring, stalling), or an activation of an audible and/or visual signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(7) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(i) Are used in conjunction with scheduled maintenance on such components,

(ii) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (b)(3)(iv) of this section for emission-data vehicles, or

(iii) Unless specifically authorized by the Administrator.

14. Section 85.085–28 of Subpart A is amended by revising paragraphs (c)(4)(ii) and (c)(4)(iii) to read as follows:

§ 85.085–28 Compliance with emission standards.

* * * * *

(c) * * *

(4) * * *

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline and diesel engines, separate factors shall be established for transient HC, CO, and NO_x. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii)(A) Paragraph (c)(4)(iii)(A) of this section applies to gasoline-fueled heavy-duty engines.

(*1*) *Gasoline-fueled heavy-duty engines not utilizing aftertreatment technology (e.g. catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g. catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel heavy-duty engines.

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g. particulate traps).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g. particulate traps).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragaph.

(*3*) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

* * * * *

15. Section 86.085–29 of Subpart A is amended by revising paragraphs (a)(3)(iii)(A)(*1*), (a)(3)(iii)(B)(*1*), (b)(3)(iii)(A) (*1*) and (*2*), and (b)(3)(iii)(B)(*1*), to read as follows:

§ 86.085–29 Testing by the Administrator.

(a) * * *

(3) * * *

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission

standards, including tests performed by the manufacturer under § 86.085–23(c)(1). The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

* * * * *

(B) * * *

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1) may be readjusted to manufacturer's specification, if those adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i). Other maintenance or repairs may be performed in accordance with § 86.085–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

* * * * *

(b) * * *

(3) * * *

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.085–23(c)(2). The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.085–35(a)(3)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) * * *

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.085–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with § 86.085–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

* * * * *

16. Section 86.085–35 of Subpart A is amended by revising paragraphs (a)(2)(iii)(E) and (F), (a)(3)(iii)(H) and (I), adding a new paragraph (a)(3)(iii)(J), revising paragraphs (c)(1)(ii)(B), (d), and (e), and revising paragraphs (f) and (g)(1) to read as follows:

§ 86.085–35 Labeling.

(a) * * *

(2) * * *

(iii) * * *

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.085–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of ———— years or ———— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (*e.g.*, hours, or miles only).

* * * * *

(3) * * *

(iii) * * *

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.085–21(f), the prominent statement: "This engine family has been certified to meet U.S. EPA standards for a useful-life period of ———— miles or ———— hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (*e.g.*, years, or hours only).

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a ————heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2.)

* * * * *

(c)(1) * * *

(ii) * * *

(B) *For light-duty trucks,*

(*1*) The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks."

(*2*) If the manufacturer is provided an alternate useful life period under the provisions of § 86.085–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of —— years or ———— miles of operation,

whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (*e.g.*, hours, or miles only).

* * * * *

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph of (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks when completed at a maximum curb weight of ——— pounds or at a maximum gross vehicle weight rating of ——— pounds or with a maximum frontal area of ——— square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed ——— gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.085–35(g)(2)."

* * * * *

17. A new § 86.085–38 is added to Subpart A to read as follows:

§ 86.085–38 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in § 86.085–8, § 86.085–9, § 86.085–10, or § 86.085–11, as applicable, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser as may be reasonable and necessary to assure the proper functioning of the emission control system.

(1) Such instructions shall be provided for those vehicle and engine components listed in Appendix VI to this part (and for any other components) to the extent that maintenance of these components is necessary to assure the proper functioning of the emission control system.

(2) Such instructions shall be in clear, and to the extent practicable, nontechnical language.

(b) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(c) *For gasoline-fueled light-duty vehicles.* (1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.085–25(a), and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) [Reserved].

(3) [Reserved].

(d) *For diesel light-duty vehicles.* (1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.085–25(a) and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) [Reserved].

(e) *For light-duty trucks.* (1) Maintenance shall specify the performance of all scheduled emission-related maintenance approved by the Administrator under § 86.085–25(b). Scheduled emission-related maintenance in addition to that performed under § 86.085–25(b) may be recommended for reasons such as to offset the effects of operating conditions which differ from the conditions experienced during the determination of deterioration factors. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator from that approved under § 86.085–25(b). The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combinations of each.

(2) If the vehicle has been granted an alternative useful-life period under the provisions of § 86.085–21(f), and thus is required to comply with the labelling requirements set forth in paragraphs (a)(2)(iii)(F) and (c)(1)(ii)(B)(*2*) of § 86.085–35, the manufacturer may choose to include in such instructions an explanation of the distinction between the alternative useful life specified on the label, and the emissions defect and emissions performance warranty period. The explanation must clearly state that the useful life period specified on the label represents the average period of use up to retirement or rebuild for the engine family used in the vehicle. An explanation of how the actual useful lives of engines used in various applications are expected to differ from the average useful life may be included. The explanation(s) shall be in clear, nontechnical language that is understandable to the ultimate purchaser.

(3) Such instructions shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above 4,000 feet, or at elevations of 4,000 feet or less.

(f) *For heavy-duty engines.* (1) Maintenance instructions shall specify the performance of all scheduled emission-related maintenance approved by the Administrator under § 86.085–25(b). Scheduled emission-related maintenance in addition to that performed under § 86.085–25(b) may be recommended for reasons such as to offset the effects of operating conditions which differ from the conditions experienced during the determination of deterioration factors. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator from that approved under § 86.085–25(b). The instuctions may schedule maintenance on a calendar time basis, mileage basis,

engine service time basis, or combinations of each.

(2) If the engine has been granted an alternative useful-life period under the provisions of § 86.085–21(f), and thus is required to comply with the labelling requirements set forth in paragraph (a)(3)(iii)(J) of § 86.085–35, the manufacturer may choose to include in such instructions an explanation of the distinction between the useful life specified on the label, and the emissions defect and emissions performance warranty period. This explanation must clearly state that the useful life period specified on the label represents the estimated average period of use up to retirement or rebuild for the engine family. An explanation may be included of how the actual useful lives of engines used in various applications are expected to differ from the average useful life. The explanation(s) shall be in clear, nontechnical language that is understandable to the ultimate purchaser.

18. A new § 86.087–10 is added to Subpart A to read as follows:

§ 86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 1987 and later model year gasoline-fueled heavy-duty engines shall not exceed:

(i) For engines intended for use in all vehicles except as provided in paragraph (a)(3) of this section,

(A) *Hydrocarbons.* 1.1 grams per brake horsepower–hour, as measured transient under operating conditions.

(B) *Carbon monoxide. (1)* 14.4 grams per brake horsepower-hour, as measured under transient operating conditions.

(2) Gasoline-fueled heavy-duty engines utilizing aftertreatment technology. 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* 10.6 grams per brake horsepower-hour, as measured under transient operating conditions.

(ii) For engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds,

(A) *Hydrocarbons.* 1.9 grams per brake horsepower-hour as measured under transient operating conditions.

(B) *Carbon Monoxide. (1)* 37.1 grams per brake horsepower-hour as measured under transient operating conditions.

(2) Gasoline-fueled heavy-duty engines utilizing aftertreatment technology. 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* 10.6 grams per brake horsepower-hour, as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subparts N or P.

(3)(i) A manufacturer may certify one or more gasoline-fueled heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraph (a)(1)(ii) of this section. *Provided that,* the total model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(ii) of this paragraph represent no more than 5 percent of total model year sales of all gasoline-fueled heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i)(A) and (b)(2)(i) of this section.

(b)(1) Evaporative emissions from 1987 and later model year gasoline-fueled heavy-duty vehicles shall not exceed:

(i) *Hydrocarbons.* (A) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds, 3.0 grams per test.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds, 4.0 grams per test.

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of fuel evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standard set forth in paragraph (b)(1)(i)(B) of this section refers to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.085–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1987 or later model year gasoline-fueled heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subparts N or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

19. A new § 86.087–21 is added to Subpart A to read as follows:

§ 86.087–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards (or family particulate emission limits, as appropriate) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii)(A) The manufacturer shall provide to the Administrator in the preliminary application for certification:

(1) A list of those parameters which are physically capable of being adjusted (included those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(2) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(3) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(4) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended

physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameter will be subject to adjustment for new certifcation and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested. The sales data shall also include the altitude of intended sale for light-duty trucks.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in §86.085–23(b)(2).

(ii) For gasoline-fueled heavy-duty vehicles, the Administrator does not assume that each evaporative emission family-evaporative emission control system combination will deteriorate in a unique manner during the useful life of the vehicle. The manufacturer shall therefore identify those evaporative emission deterioration factors which shall be applied to the various evaporative emission family-evaporative emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(iii)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.085–23(b)(1).

(B)(*1*) For engine families provided an alternative useful-life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(*2*) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(C)(*1*) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(*2*) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(D) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(5) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(i) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile.

(ii) The manufacturer may at any time during production elect to change the level of any family diesel particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.085–2 and § 86.085–28(b)(5).

(6)(i) For gasoline-fueled heavy-duty engines, the application must state whether the engine family is being certified for use in all vehicles regardless of their Gross Vehicle Weight Rating (see § 86.087–10(a)(1)(i) and (a)(3)(i)), or, only for use in vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds.

(ii) If the engine family is being certified for use in all vehicles and, is being certified to the emission standards applicable to gasoline-fueled heavy-duty engines for use only in vehicles with a Gross Vehicle Weight Rating over 14,000 pounds under the provisions of paragraph (a)(3) of § 86.087–10, then the application must also attest that the engine family, together with all other engine families being certified under the povisions of paragraph (a)(3) of § 86.087–10, represent no more than 5 percent of model year sales of the manufacturer of all gasoline-fueled heavy-duty engines for use in vehicles with Gross Vehicle Weight Ratings of up to 14,000 pounds.

(iii)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.087–23(b)(1).

(B)(*1*) A statement of the useful life of use of each light-duty truck engine family and heavy-duty engine family.

(*2*) For engine families provided an alternative useful life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(*3*) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(C)(*1*) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(*2*) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(D) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under § 86.079–32, § 86.079–33, and § 86.079–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

(e) For gasoline-fueled heavy-duty vehicles the manufacturer shall specify a maximum nominal fuel tank capacity for each evaporative emission family-

evaporative emission control system combination.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.085–2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation.

20. A new § 86.087–23 is added to Subpart A, to read as follows:

§ 86.087–23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicle (or engine) for which emission data are available or will be made available under the provisions of § 86.085–29.

(1) [Reserved.]

(2) [Reserved.]

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.085–21(b)(4)(iii)(A) as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.085–30 will meet the emission standards (or family particulate emission limits, as appropriate) in § 86.085–09, § 86.087–10, or § 86.085–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.085–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.085–30 will meet the evaporative emission standards in § 86.085–8 or § 86.085–9, as appropriate, for the useful life of the vehicle.

(3) For gasoline-fueled heavy-duty vehicles, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.087–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.085–30 will meet the evaporative emission standards in § 86.085–10 in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(4)(i) For gasoline-fueled, heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.085–10 as determined by the provisions of § 86.085–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(ii) For gasoline-fueled, heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.085–10 as determined by the provisions of § 86.085–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) *Emission data.* (1)(i) Emission data on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.084–26(a)(3)(i) or § 86.084–26(a)(3)(ii).

(ii) [Reserved].

(2) *Certification engines.* (i) Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.082–26(b)(5). In lieu of providing emission data on CO emissions from diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the CO emission standard of § 86.085–11.

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with Subpart N, when making application for certification. However, for conformity SEA and recall testing by the Agency, both the cold-start and hot-start test data, as specified in Subpart N, will be included in the official results.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.078–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.078–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e)(1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards (or family particulate emission limits, as appropriate) of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicles (or test engine) was not as

described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards (or family particulate emission limits, as appropriate). The provisions of § 86.084–30(b) shall then be followed.

(2) For evaporative emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(1)(ii), (b)(2), or (b)(3) of this section, as applicable.

(f) Additionally, manufacturers participating in the diesel particulate averaging program shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manfacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the diesel particulate averaging program, the number of vehicles produced in each engine family at each certified family diesel particulate emission limit, along with the resulting production-weighted average particulate emission level.

21. A new § 86.087–28 is added to Subpart A to read as follows:

§ 86.087–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The applicable exhaust and fuel evaporative emission standards (and family particulate emission limits, as appropriate) of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards (or family particulate emission limit, as appropriate).

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards (or family particulate emission limit, as appropriate) is as follows, except where specified by paragraph (a)(7) of this section for the Alternative Durability Program:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NO_x, and exhaust particulate (diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only).

(A) The applicable results to be used unless excluded by paragraph (a)(4)(i)(A)(*4*) of this section in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.084–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.085–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.085–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.085–24(c)(1)(ii)).

(*2*) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.085–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.085–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(*4*) The manufacturer has the option of applying an outlier test point procedure to completed durability data within its certification testing program for a given model year. The outlier procedure will be specified by the Administrator. For any pollutant, durability-data test points that are identified as outliers shall not be included in the determination of deterioration factors if the manufacturer has elected this option. The manufacturer shall specify to the Administrator before the certification of the first engine family for that model year, it it intends to use the outlier procedure. The manufacturer may not change procedures after the first engine family of the model year is certified. Where the manufacturer chooses to apply both the outlier procedure and averaging (as allowed under § 86.082–26(b)(8)(ii) to the same data set, the outlier procedure shall be completed prior to applying the averaging procedure.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The data will be acceptable for use in the calculation of the deterioration factor only if the interpolated 4,000-mile and 50,000-mile points on this line are within the low-altitude standards provided in § 86.085–8 or § 86.085–9, as applicable. Exceptions to this where data are still acceptable are when a best fit straight line crosses an applicable standard but no data points exceeded the standard, or the best fit straight line crosses as applicable standard with a negative slope (the 4,000-mile interpolated point is higher than the 50,000-mile interpolated point) but the 50,000-mile actual data point is below the standard. A multiplicative exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor=Exhaust emissions interpolated to 50,000 miles divided by exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTME 29–67.

(C) An evaporative emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from the testing conducted as described in § 86.084–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor=Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission-data vehicle at the selected test point shall be multiplied by the appropriate deterioration factor: *Provided*: That if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results (gasoline-fueled vehicles only) for each evaporative emission-data vehicle at the selected test point shall be adjusted by addition of the

appropriate deterioration factor:
Provided: That if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard (or the family particulate emission limit, as appropriate) shall be the adjusted emissions of paragraphs (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard (or the family particulate emission limit, as appropriate), it shall be rounded, in accordance with ASTME 29–67, to two significant figures. The rounded emission values may not exceed the standard (or the family particulate emission limit, as appropriate).

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards (or the family particulate emission limit, as appropriate), as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (a)(4)(iii) of this section before any vehicle in that family may be certified.

(5) If a manufacturer chooses to change the level of any family particulate emission limit(s) in the particulate averaging program, compliance with the new limit(s) must be based upon existing certification data.

(6) If a manufacturer chooses to participate in the diesel particulate averaging program, the production-weighted average of the family particulate emission limits of all affected engine families must comply with the particulate standards in § 86.085–8(a)(1)(iv) or § 86.085–9(a)(1)(iv), as appropriate, at the end of the production year.

(7) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (a)(4)(iii) through (a)(4)(v) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (a)(4) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined for the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (a)(4) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculation of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicles selected under § 86.085–24(h), all applicable exhaust emissions results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicles shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line-crossing.* For the purposes of paragraph (a)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c), § 86.085–24(h)(2), or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standards. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standards, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) The exhaust and fuel evaporation emission standards (and the family particulate emission limits, as appropriate) of § 86.085–9 apply to the emissions of vehicles for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioration factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards (or the family particulate emission limit, as appropriate).

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new vehicle with exhaust emission standards (or the family particulate emission limit, as appropriate), based on deterioration factors supplied by the manufacturers, except where specified by paragraph (b)(5) of this section for the Alternative Durability Program.

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HD, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only).

(iii) For transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only), the official exhaust emission results for each emission-data vehicle at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(iv) The emission values to compare with the standards (or family particulate emission limit, as appropriate) shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTME 29–67 for each emission-data engine.

(5)(i) Paragraph (b)(5) of this section applies only to manufacturers which

elect to participate in the particulate averaging program.

(ii) If a manufacturer chooses to change the level of any family particulate emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(iii) The production-weighted average of the family particulate emission limits of all applicable engine families rounded to two significant figures in accordance with ASTME 29–67 must comply with the particulate standards in § 86.085–8(a)(1)(iv) or § 86.085–9(a)(1)(iv), as appropriate, at the end of the product year.

(6) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraph (b)(4)(iv), (b)(7)(iv) and (b)(8) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (b)(7) of this section. The procedures to determine the minimum exhaust emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (b)(6) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.085–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculations of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicle selected under § 86.085–24(h), all applicable exhaust emission results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line crossing.* For the purposes of paragraph (b)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 5,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.085–24(c)(1), or § 86.085–24(h)(2) or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.085–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standard. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standard, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(7)(i) Paragraph (b)(7) of this section describes the procedure for determining compliance of a new vehicle with fuel evaporative emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.085–21(b)(4)(i), and supply an evaporative emission deterioration factor for each evaporative emission family-evaporative emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(7)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(8) Every test vehicle of an engine family must comply with all applicable standards (and the family particulate emissions limits, as appropriate), as determined in paragraphs (b)(4)(iv) and (b)(7)(iv) of this section, before any vehicle in that family will be certified.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.087–10 of for diesel engines in § 86.085–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards, based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline and diesel engines, separate factors shall be established for transient HC, CO, and NO_x. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii) (A) Paragraph (c)(4)(iii)(A) of this section applies to gasoline-fueled heavy-duty engines.

(*1*) *Gasoline-fueled heavy-duty engines not utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters).*

For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel heavy-duty engines.

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Diesel heavy-duty engines utilizing aftertreatment technology (e.g., particulate traps.)* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(*3*) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards shall be the adjusted emission values of paragraph (c)(4)(iii) of this section rounded to two significant figures in accordance with ASTME 29–67 for each emission-data engine.

(5) [Reserved].

(6) [Reserved].

(7) Every test engine of an engine family must comply with all applicable standards, as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

(d)(1) Paragraph (d) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The applicable fuel evaporative emission standard in § 86.085–10 applies to the emissions of vehicles for their useful life.

(3)(i) For vehicles with a GVWR of up to 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, an evaporative emission deterioration factor shall be determined from the testing described in § 86.085–23(b)(3) for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The factor shall be established to a minimum of two places to the right of the decimal.

(ii) For vehicles with a GVWR of greater than 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, each manufacturer's statement as required in § 86.085–23(b)(4)(ii) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The evaporative emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor: *Provided,* that if the deterioration factor as computed in paragraph (c)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (c)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTME 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (c)(5) of this section, before any vehicle in that family may be certified.

22. A new § 86.087–35 is added to Subpart A to read as follows:

§ 86.087–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family particulate emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.084–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate emission limit, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.085–8(h),

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V, do not apply when the vehicle is tested at high altitude; and

(H) For vehicles that have been exempted from compliance with the

emission standards at low altitude, as specified in § 86.085–8(i),

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only, and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V, do not apply when the vehicle is tested at low altitude.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family particulate limit as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO. idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family particulate limit, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.085–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of —— years or ———— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (*e.g.*, hours, or miles only);

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified;

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser;

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.085–9(g)(2),

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I, do not apply when the vehicle is tested at high altitude; and,

(J) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Heavy-Duty Engines."

(I) If the manufacturer is provided with an alternate useful-life period under the provisions of § 86.085–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of ———— miles or —— hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (*e.g.*, years, or hours only);

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a ————heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2);

(K) *For gasoline-fueled engines.* One of the following statements as applicable:

(*1*) For engines certified to the emission standards under § 86.087–10(a)(1)(i), the statement: "This engine is certified for use in all heavy-duty vehicles."

(*2*) For engines certified under the provisions of § 86.087–10(a)(3)(i), the statement: "This engine is certified for

use in all heavy-duty vehicles under the special provision of 40 CFR 86.087–10(a)(3)(i)."

(3) For engines certified to the emission standards under § 86.087–10(a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(iv) The label may be made up of one or more pieces; *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(4)(i) *Gasoline-fueled heavy-duty vehicles.* A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and,

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family particulate emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19—— Model Year New Motor Vehicles."

(B) *For light-duty trucks,*

(1) The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks."

(2) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.085–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of —— years or ———— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (*e.g.,* hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks when completed at a maximum curb weight of ———— pounds or at a maximum gross vehicle weight rating of ———— pounds or with a maximum frontal area of ———— square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any imcomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed ———— gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.085–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{\text{T. Vol.}}{\text{Max. Vol.}} \right)$$

Where:
Cap_f = final amount of fuel tank vapor storage material, grams
Cap_i = initial amount of fuel tank vapor storage material, grams
T. Vol. = total fuel tank volume of completed vehicle, gallons
Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same adsorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

Subpart B—[Amended]

23. Section 86.133–78 of Subpart B is amended by revising paragraph (e) to read as follows:

§ 86.133–78 Diurnal breathing loss test.

* * * * *

(e) Immediately prior to the diurnal breathing loss test, the fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank shall be between 45 and 60° F (7.2 and 16° C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

* * * * *

Subpart F—[Amended]

24. Section 86.544–78 of Subpart F is revised to read as follows:

§ 86.544–78 Calculations; exhaust emissions.

The final reported test results, with oxides of nitrogen being optional, shall be computed by use of the following formulae: (The results of all emission tests shall be rounded, using the "Rounding-Off Method" specified in ASTM E 29–67, to the number of places to the right of the decimal point indicated by expressing the applicable standard to three significant figures.)

(a)

$$Y_{wm} = 0.43[(Y_{ct} + Y_s)/(D_{ct} + D_s)] + 0.57[(Y_{ht} + Y_s)/(D_{ht} + D_s)]$$

Where:
Y_{wm} = Weighted mass emissions of CO_2 or of each pollutant, i.e., HC, CO, or NO_x, in grams per vehicle kilometer
Y_{ct} = Mass emissions as calculated from the "transient" phase of the cold-start test, in grams per test phase
Y_{ht} = Mass emissions as calculated from the "transient" phase of the hot-start test, in grams per test phase
Y_s = Mass emissions as calculated from the "stabilized" phase of the cold-start test, in grams per test phase
D_{ct} = The measured driving distance from the "transient" phase of the cold-start test, in kilometers
D_{ht} = The measured driving distance from the "transient" phase of the hot-start test, in kilometers
D_s = The measured driving distance from the "stabilized" phase of the cold-start test, in kilometers

(b) The mass of each pollutant for each phase of both the cold-start test and the hot-start test if determined from the following:

(1) Hydrocarbon mass:

$$HC_{mass} = V_{mix} \times Density_{HC} \times (HC_{conc}/1{,}000{,}000)$$

(2) Oxides of nitrogen mass:

$$NO_{xmass} = V_{mix} \times Density_{NO2} \times (NO_{xconc} \times K_h/1{,}000{,}000)$$

(3) Carbon monoxide mass:

$$CO_{mass} = V_{mix} \times Density_{CO} \times (CO_{conc}/1{,}000{,}000)$$

(4) Carbon dioxide mass:

$$CO_{2mass} = V_{mix} \times Density_{CO2} \times (CO_{2conc}/100)$$

(c) Meaning of symbols:

(1) HC_{mass} = Hydrocarbon emissions, in grams per test phase
$Density_{HC}$ = Density of hydrocarbon in the exhaust gas, 576.8 g/m³/carbon atom (16.33 g/ft³/carbon atom), assuming an average carbon to hydrogen ratio of 1:1.85, at 20°C (68°F) and 101.325 kPa (760 mm Hg) pressure
HC_{conc} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane × 3
$HC_{conc} = HC_e - HC_d(1 - 1/DF)$

Where:
HC_e = Hydrocarbon concentrations of the dilute exhaust sample as measured, in ppm carbon equivalent (propane ppm × 3)
HC_d = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent (propane ppm × 3)

(2) NO_{xmass} = Oxides of nitrogen emissions, in grams per test phase
$Density_{NO2}$ = Density of oxides of nitrogen in the exhaust gas, assuming they are in the form of nitrogen dioxide, 1,913 g/m³ (54.16 g/ft³), at 20°C (68°F) and 101.325 kPa (760 mm Hg) pressure
NO_{xconc} = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm

$$NO_{xconc} = NO_{xe} - NO_{xd}(1 - 1/DF)$$

Where:
NO_{xe} = Oxides of nitrogen concentration of the dilute exhaust sample as measured, in ppm
NO_{xd} = Oxides of nitrogen concentration of the dilution air as measured, in ppm

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase
$Density_{CO}$ = Density of carbon monoxide, 1,164 g/m³ (32.97 g/ft³), at 20°C (68°F) and 101.325 kPa (760 mm Hg) pressure
CO_{conc} = Carbon monixide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm

$$CO_{conc} = CO_e - CO_d(1 - 1/DF)$$

Where:
CO_e = Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

$$CO_e = (1 - 0.01925CO_{2e} - 0.000323R)\ CO_{em}$$

Where:
CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm
CO_{2e} = Carbon dioxide concentration of the dilute exhaust sample, in percent
R = Relative humidity of the dilution air, in percent (see § 86.542.78(n))
CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm

$$CO_d = (1 - 0.000323R)\ CO_{dm}$$

Where:
CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm

Note.—If a CO instrument which meets the criteria specified in § 86.511 is used and the conditioning column has been deleted, CO_{em} can be substituted directly for CO_e and CO_{dm} can be substituted directly for CO_d.

(4) CO_{2mass} = Carbon dioxide emissions, in grams per test phase
Density CO_2 = Density of carbon dioxide, 1,830 g/m³ (51.81 g/ft³), at 20°C (68°F) and 101.325 kPa (760 mm Hg) pressure
CO_{2conc} = carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent

$$CO_{2conc} = CO_{2e} - CO_{2d}(1 - 1/DF)$$

Where:
CO_{2d} = Carbon dioxide concentration of the dilution air as measured, in percent

(5) $DF = 13.4/[CO_{2e} + (HC_e + CO_e)10^{-4}]$

V_{mix} = Total dilute exhaust volume in cubic meters per test phase corrected to standard conditions (293.15° K (528°R) and 101.325 kPa (760 mm Hg))

$V_{mix} = V_o \times N[P_b - P_i)(293.15°K)]/[(101.325 kPa)(T_p)]$

Where:

V_o = Volume of gas pumped by the positive displacement pump, in cubic meters per revolution. This volume is dependent on the pressure differential across the positive displacement pump. (See calibration techniques in § 86.519–78)

N = Number of revolutions of the positive displacement pump during the test phase while samples are being collected

P_b = Barometric pressure, in kPa

P_i = Pressure depression below atmospheric measured at the inlet to the positive displacement pump, in kPa

T_p = Average temperature of dilute exhaust entering positive displacement pump during test while samples are being collected, in degrees Kelvin

K_h = Humidity correction factor

$K_h = 1/[1 - 0.0329(H - 10.71)]$

where:

H = Absolute humidity in grams of water per kilogram of dry air

$H = [(6.211)R_a \times P_d]/[P_b - (P_d \times R_a/100)]$

R_a = Relative humidity of the ambient air, in percent

P_d = Saturated vapor pressure, in kPa at the ambient dry bulb temperature

(d) Sample calculation of mass emission values for vehicles with engine displacements equal to or greater than 170 cc (10.4 cu. in.):

(1) For the "transient" phase of the cold-start test, assume $V_o = 0.0077934$ m³ per revolution; N = 12,115; R = 20.5 percent; $R_a = 20.5$ percent; $P_b = 99.05$ kPa; $P_d = 3.382$ kPa; $P_i = 9.851$ kPa; $T_p = 309.8$ K; $HC_e = 249.75$ ppm carbon equivalent; $NO_{xe} = 38.30$ ppm; $CO_{em} = 311.23$ ppm; $CO_{2e} = 0.415$ percent; $HC_d = 4.90$ ppm; $NO_{xd} = 0.30$ ppm; $CO_{dm} = 8.13$ ppm; $CO_{2d} = 0.037$ percent; $D_{ct} = 5.650$ km.

Then:

$V_{mix} = [(0.0077934)(12,115)(99.05 - 9.851)(293.15)]/[(101.325)(309.8)]$

$V_{mix} = 78.651$ m³ per test phase

$H = [(6.211)(20.5)(3.382)]/[(99.05) - (3.382)(20.5/100)]$

$H = 4.378$ grams H_2O per kg dry air

$K_h = 1/[1 - 0.0329(4.378 - 10.71)]$

$K_h = 0.8276$

$CO_e = [1 - 0.01925(0.415) - 0.000323(20.5)](311.23)$

$CO_e = 306.68$ ppm

$CO_d = [1 - 0.000323(20.5)](8.13)$

$CO_d = 8.08$ ppm

$DF = 13.4/[0.415 + (249.75 + 306.68)10^{-4}]$

$DF = 28.472$

$HC_{conc} = 249.75 - 4.90(1 - 1/28.472)$

$HC_{conc} = 245.02$ ppm

$HC_{mass} = (78.651)(576.8)(245.02)\ 10^{-6}$

$HC_{mass} = 11.114$ grams per test phase

$NO_{xconc} = 38.30 - 0.30(1 - 1/28.472)$

$NO_{xconc} = 38.01$ ppm

$NO_{xmass} = (78.651)(1913)(38.01)(0.8276)10^{-6}$

$NO_{xmass} = 4.733$ grams per test phase

$CO_{conc} = 306.68 - 8.08(1 - 1/28.472)$

$CO_{conc} = 298.88$ ppm

$CO_{mass} = (78.651)(1164)(298.88)10^{-6}$

$CO_{mass} = 27.362$ grams per test phase

$CO_{2conc} = 0.415 - 0.037(1 - 1/28.472)$

$CO_{2conc} = 0.3793$ percent

$CO_{2mass} = (78.651)(1843)(0.3793)/100$

$CO_{2mass} = 549.81$ grams per test phase

(2) For the "stabilized" portion of the cold-start test, assume that similar calculations resulted in $HC_{mass} = 7.184$ grams per test phase; $NO_{xmass} = 2.154$ grams per test phase; $CO_{mass} = 64.541$ grams per test phase; and $CO_{2mass} = 529.52$ grams per test phase. $D_s = 6.070$ kilometers.

(3) For the "transient" portion of the hot-start test, assume that similar calculations resulted in $HC_{mass} = 6.122$ grams per test phase; $NO_{xmass} = 7.056$ grams per test phase; $CO_{mass} = 34.964$ grams per test phase; and $CO_{2mass} = 480.93$ per test phase. $D_{ht} = 5.660$ kilometers.

(4) For a 1978 motorcycle with an engine displacement equal to or greater than 170 cc (10.4 cu. in.):

$HC_{wm} = 0.43[(11.114 + 7.184)/(5.650 + 6.070)] + 0.57[(6.122 + 7.184)/(5.660 + 6.070)]$

$HC_{wm} = 1.318$ grams per vehicle kilometer

$NO_{xwm} = 0.43[(4.733 + 2.154)/(5.650 + 6.070)] + 0.57[(7.056 + 2.154)/(5.660 + 6.070)]$

$NO_{xwm} = 0.700$ gram per vehicle kilometer

$CO_{wm} = 0.43[(27.362 + 64.541)/(5.650 + 6.070)] + 0.57[(34.964 + 64.541)/(5.660 + 6.070)]$

$CO_{wm} = 8.207$ grams per vehicle kilometer

$CO_{2wm} = 0.43[(549.81 + 529.52)/(5.650 + 6.070)] + 0.57[(480.93 + 529.52)/(5.660 + 6.070)]$

$CO_{2wm} = 88.701$ grams per vehicle kilometer

25. Subpart I is revised to read as follows:

* * * * *

Subpart I—Emission Regulations for New Diesel-Fueled Heavy-Duty Engines; Smoke Exhaust Test Procedure

Sec.

86.884–1 General applicability.
86.884–2 Definitions.
86.884–3 Abbreviations.
86.884–4 Section numbering.
86.884–5 Test procedures.
86.884–6 Diesel fuel specifications.
86.884–7 Dynamometer operation cycle for smoke emission tests.
86.884–8 Dynamometer and engine equipment.
86.884–9 Smoke measurement system.
86.884–10 Information.
86.884–11 Instrument checks.
86.884–12 Test run.
86.884–13 Data analysis.
86.884–14 Calculations.

Authority: Secs. 202, 206, 207, 208, 301(a), Clean Air Act; as amended 42 U.S.C. 7521, 7524, 7541, 7542, and 7601.

* * * * *

Subpart I—Emission Regulations for New Diesel-Fueled Heavy-Duty Engines; Smoke Exhaust Test Procedure

§ 86.884–1 General applicability.

The provisions of this subpart are applicable to new diesel-fueled heavy-duty engines beginning with the 1984 model year.

§ 86.884–2 Definitions.

The definitions in § 86.084–2 apply to this subpart.

§ 86.884–3 Abbreviations.

The abbreviations in § 86.078–3 apply to this subpart.

§ 86.884–4 Section numbering.

The section numbering system set forth in § 86.084–4(a) applies to this subpart.

§ 86.884–5 Test procedures.

The procedures described in this and subsequent sections will be the test program to determine the conformity of engines with the standards set forth in § 86.084–11(b).

(a) The test consists of a prescribed sequence of engine operating conditions on an engine dynamometer with continuous examination of the exhaust gases. The test is applicable equally to controlled engines equipped with means for preventing, controlling, or eliminating smoke emissions and to uncontrolled engines.

(b) The test is designed to determine the opacity of smoke in exhaust emissions during those engine operating conditions which tend to promote smoke from diesel vehicles.

(c) The test procedure begins with a preconditioned engine which is then run through preloading and preconditioning operations. After an idling period, the engine is operated through acceleration and lugging modes during which smoke emission measurements are made to compare with the standards. The engine is then returned to the idle condition and the acceleration and lugging modes are repeated. Three consecutive sequences of acceleration and lugging constitutes the full set of operating conditions for smoke emission measurement.

(d) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle engine shall be functioning during all procedures in this subpart. Maintenance

to correct component malfunction or failure shall be authorized in accordance with § 86.084–24.

§ 86.884–6 Diesel fuel specifications.

The requirements of this section are set forth in § 86.1313–84(b).

§ 86.884–7 Dynamometer operation cycle for smoke emission tests.

(a) The following sequence of operations shall be performed during engine dynamometer testing of smoke emissions, starting with the dynamometer preloading determined and the engine preconditioned (§ 86.884–12(c)).

(1) *Idle mode.* The engine is caused to idle for 5 to 5.5 minutes at the manufacturer's recommended curb idle speed. The dynamometer controls shall be set to provide minimum load by turning the load switch to the "off" position or by adjusting the controls to the minimum load position.

(2) *Acceleration mode.* (i) The engine speed shall be increased to 200 ±50 rpm above the manufacturer's recommended curb idle speed within three seconds.

(ii) Immediately upon completion of the mode specified in paragraph (a)(2)(i) of this section, the throttle shall be moved rapidly to, and held in, the fully open position. The inertia of the engine and the dynamometer, or alternately a preselected dynamometer load, shall be used to control the acceleration of the engine so that the speed increases to 85 percent of the rated speed in 5 ±1.5 seconds. This acceleration shall be linear within 100 rpm as specified in § 86.884–13(c).

(iii) After the engine reaches the speed required in paragraph (a)(2)(ii) of this section, the throttle shall be moved rapidly to, and held in, the fully closed position. Immediately after the throttle is closed, the preselected load required to perform the acceleration in paragraph (a)(2)(iv) of this section shall be applied. For electric dynamometer operation in speed mode, the deceleration shall be performed in 2 ±1.5 seconds.

(iv) When the engine decelerates to the intermediate speed (within 50 rpm), the throttle shall be moved rapidly to, and held in, the fully open position. The preselected dynamometer load which was applied during the preceding transition period shall be used to control the acceleration of the engine so that the speed increases to at least 95 percent of the rated speed in 10 ±2 seconds.

(v) For electric dynamometer operation in speed mode, motoring assist may be used to offset excessive dynamometer inertia load when necessary. No negative flywheel torque shall occur during any of the three acceleration modes in (a)(2).

(3) *Lugging mode.* (i) Immediately upon completion of the preceding acceleration mode, the dynamometer controls shall be adjusted to permit the engine to develop maximum horsepower at rated speed. This transition period shall be 50 to 60 seconds in duration. During the last 10 seconds of this period, the engine speed shall be maintained within 50 rpm of the rated speed, and the power (corrected, if necessary, to rating conditions) shall be no less than 95 percent of the maximum horsepower developed at the zero-hour point.

(ii) With the throttle remaining in the fully open position, the dynamometer controls shall be adjusted gradually so that the engine speed is reduced to the intermediate speed (within 50 rpm). This lugging operation shall be performed smoothly over a period of 35 ±5 seconds. The rate of slowing of the engine shall be linear, within 100 rpm, as specified in § 86.884–13(c).

(4) *Engine unloading.* Immediately upon completion of the preceding lugging mode, the dynamometer and engine controls shall be returned to the idle position described in paragraph (a)(1) of this section. The engine must be at the curb idle condition within one minute after completion of the lugging mode.

(b) The procedures described in paragraphs (a)(1) through (a)(4) of this section shall be repeated until three consecutive valid cycles have been completed. If three valid cycles have not been completed after a total of six consecutive cycles have been run, the engine shall be preconditioned by operation at maximum horsepower at rated speed for 10 minutes before the test sequence is repeated.

§ 86.884–8 Dynamometer and engine equipment.

The following equipment shall be used for smoke emission testing of engines on engine dynamometers:

(a) An engine dynamometer with adequate characteristics to perform the test cycle described in §86.884–7.

(b) An engine cooling system having sufficient capacity to maintain the engine at normal operating temperatures during conduct of the prescribed engine tests.

(c) An exhaust system whose end is 15 ±5 feet from the exhaust manifold (or the crossover junction in the case of Vee engines). The exhaust system can share the same hardware required in Part 86 Subpart N, § 86.1327–84(f)(2), insofar as that hardware also meets the following smoke test requirements. The smoke exhaust system shall present an exhaust backpressure within ±0.2 inch Hg of the upper limit at maximum rated horsepower, as established by the engine manufacturer in his sales and service literature for vehicle application. The terminal two feet of the exhaust pipe used for smoke measurement shall be of circular cross section and be free of elbows and bends. The end of the pipe shall be cut off squarely. The terminal two feet of the exhaust pipe shall have a nominal inside diameter in accordance with the engine being tested, as specified below:

Maximum-rated horsepower	Exhaust pipe diameter (inches)
Less than 101	2
101 to 200	3
201 to 300	4
301 or more	5

(d) An engine air inlet system presenting an air inlet restriction within one inch of water of the upper limit for the engine operating condition which results in maximum air flow, as established by the engine manufacurer in his sales and service literature, for the engine being tested.

§ 86.884–9 Smoke measurement system.

(a) *Schematic drawing.* The Figure I84–1 is a schematic drawing of the optical system of the light extinction meter.

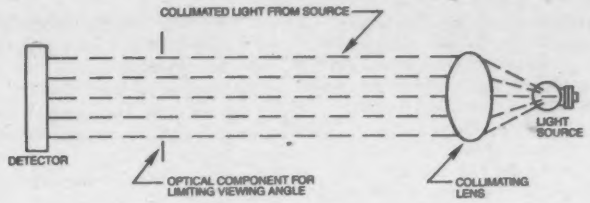


Figure 184-1 SMOKEMETER OPTICAL SYSTEM (SCHEMATIC)

(b) *Equipment.* The following equipment shall be used in the system.

(1) Adapter—the smokemeter optical unit may be mounted on a fixed or movable frame. The normal unrestricted shape of the exhaust plume shall not be modified by the adaptor, the meter, or any ventilatory system used to remove the exhaust from the test site.

(2) Smokemeter (light extinction meter)—continuous recording, full-flow light obscuration meter. It shall be positioned near the end of the exhaust pipe so that a built-in light beam traverses the exhaust smoke plume which issues from the pipe at right angles to the axis of the plume. The light source is an incandescent lamp operating at a constant voltage of not less than 15 percent of the manufacturer's specified voltage. The lamp output is collimated to a beam with a nominal diameter of 1.125 inches. The angle of divergence of the collimated beam shall be within a 4° included angle. A light detector, directly opposed to the light source, measures the amount of light blocked by the smoke in the exhaust. The detector sensitivity is restricted to the visual range and comparable to that of the human eye. A collimating tube with apertures equal to the beam diameter is attached to the detector. It restricts the viewing angle of the detector to within a 16° included angle. An amplified signal corresponding to the amount of light blocked is recorded continuously on a remote recorder. An air curtain across the light source and detector window assemblies may be used to minimize deposition of smoke particles on those surfaces provided that it does not measurably affect the opacity of the plume. The meter consists of two units, and optical unit and a remote control unit. Light extinction meters employing substantially identical measurement principles and producing substantially equivalent results but which employ other electronic and optical techniques may be used only after having been approved in advance by the Administrator.

(3) Recorder—a continuous recorder, with variable chart speed over a minimal range of 0.5 to 8.0 inch per minute (or equivalent) and an automatic marker indicating 1-second intervals shall be used for continuously recording the exhaust gas opacity, engine rpm and throttle position. The recorder shall be equipped to indicate only when the throttle is in the fully open or fully closed position. The recorder scale for opacity shall be linear and calibrated to read from 0 to 100 percent opacity full scale. The opacity trace shall have a resolution within 1-percent opacity. The recorder scale for engine rpm shall be linear and have a resolution of 30 rpm. The throttle position trace must clearly indicate when the throttle is in the fully open and fully closed positions. Any means other than a strip-chart recorder may be used provided it produces a permanent visual data record of quality equal to or better than that described above (e.g., tabulated data, traces, or plots).

(4) The recorder used with the smokemeter shall be capable of full-scale deflection in 0.5 second or less. The smokemeter-recorder combination may be damped so that signals with a frequency higher than 10 cycles per second are attenuated. A separate lowpass electronic filter with the following performance characteristics may be installed between the smokemeter and the recorder to achieve the high-frequency attenuation:

(i) Three decibel point—10 cycles per second.

(ii) Insertion loss—zero ±0.5 decibel.

(iii) Selectivity—12 decibels per octave above 10 cycles per second.

(iv) Attenuation—27 decibels down at 40 cycles per second minimum.

(5) In lieu of the use of chart recorders, automatic data collection equipment may be used to record all required data. Automatic data processing equipment may then be used to perform the data analysis specified in § 86.884–13. The automatic data collection equipment must be capable of sampling at least two records per second.

(c) *Assembling equipment.* (1) The optical unit of the smokemeter shall be mounted radially to the exhaust pipe so that the measurement will be made at right angles to the axis of the exhaust plume. The distance from the optical centerline to the exhaust pipe outlet shall be 5 ±1 inch. The full flow of the exhaust stream shall be centered between the source and detector apertures (or windows and lenses) and on the axis of the light beam.

(2) Power shall be supplied to the control unit of the smokemeter in time to allow at least 15 minutes for stabilization prior to testing.

§ 86.884–10 Information.

The following information, as applicable, shall be recorded for each test:

(a) Engine description and specifications. A copy of the information specified in this paragraph must accompany each engine sent to the Administrator for compliance testing. If the engine is submitted to the Administrator for testing under Subpart N, only the information specified in § 86.1344–84 need accompany the engine. The manufacturer need not record the information specified in this paragraph for each test if the information, with exception of paragraphs (a)(3), (a)(12), and (a)(13) of this section, is included in the manufacturer's Part I.

(1) Engine-system combination.

(2) Engine identification numbers.

(3) Number of hours of operation accumulated on engine.

(4) Rated maximum horsepower and torque.

(5) Maximum horsepower and torque speeds.

(6) Engine displacement.

(7) Governed speed.

(8) Curb-idle rpm.

(9) Fuel consumption at maximum power and torque.

(10) Maximum air flow.

(11) Maximum and test air inlet restriction.

(12) Exhaust pipe diameter(s).

(13) Maximum exhaust system backpressure.

(b) Test data; general. This information may be recorded at any time between four hours prior to the test and four hours after the test.

(1) Engine-system combination.

(2) Engine identification numbers.

(3) Instrument operator.

(4) Engine operator.

(5) Number of hours of operation accumulated on the engine prior to beginning the warm-up portion of the test.

(6) Calibration date(s) of neutral density filters used to calibrate the smokemeter.

(c) Test data; pre-test.

(1) Date and time of day.

(2) Test number.

(3) Barometric pressure.

(4) Smokemeter: Number-zero control setting—calibration control setting—gain.

(5) Intake air humidity and temperature:

(i) Humidity-conditioned air supply. Air that has had its absolute humidity altered is considered humidity-conditioned air. For this type of intake air supply, the humidity measurement must be made within the intake air supply system, and after the humidity conditioning has taken place.

(ii) Non-conditioned air supply. Humidity measurements in non-conditioned intake air supply systems must be made in the intake air stream entering the supply system and within 18 inches of the inlet for supply system. Alternatively, the humidity measurements can be measured within the intake air supply stream.

(iii) Engine intake air temperature measurement must be made within 48 inches of the engine. The measurement location must be made either in the supply system or in the air stream entering the supply system.

(d) Test data; modal.

(1) Observed engine torque and speed during the steady-state test conditions specified in § 86.884–7(a)(3)(i).

(2) On the recorder or automatic data collection equipment: Identify zero traces—calibration traces—idle traces (or printout of the zero and calibration values)—closed-throttle trace-open throttle trace—acceleration and lugdown test traces—start and finish of each test.

§ 86.884–11 Instrument checks.

(a) The smokemeter shall be checked according to the following procedure prior to each test:

(1) The optical surfaces of the optical section shall be visually checked to verify that they are clean and free of foreign material and fingerprints;

(2) The zero control shall be adjusted under conditions of "no smoke" to give a recorder or data collection equipment response of zero;

(3) Calibrated neutral density filters having approximately 10, 20, and 40 percent opacity shall be employed to check the linearity of the instrument. The filter(s) shall be inserted in the light path perpendicular to the axis of the beam and adjacent to the opening from which the beam of light from the light source emanates, and the recorder response shall be noted. Filters with exposed filtering media should be checked for opacity every six months; all other filters shall be checked every year, using NBS or equivalent reference filters. Deviations in excess of 1 percent of the nominal opacity shall be corrected.

(b) The instruments for measuring and recording engine rpm, engine torque, air inlet restrictions, exhaust system backpressure, throttle position, etc., which are used in the test prescribed herein, shall be calibrated in accordance with good engineering practice.

§ 86.884–12 Test run.

(a) The temperature of the air supplied to the engine shall be between 68° F and 86° F. The fuel temperature at the pump inlet shall be 100° F±10° F. The observed barometric pressure shall be between 28.5 inches and 31 inches Hg. Higher air temperature or lower barometric pressure may be used, if desired, but no allowance will be made for possible increased smoke emissions because of such conditions.

(b) The governor and fuel system shall have been adjusted to provide engine performance at the levels in the application for certification required under § 86.084–21.

(c) The following steps shall be taken for each test:

(1) Start cooling system;

(2) Warm up the engine by the procedure described in § 86.1332–84(d)(3) (i) through (v).

(3) Determine by experimentation the dynamometer inertia and dynamometer load required to perform the acceleration in the dynamometer cycle for smoke emission tests (§ 86.884–7(a)(2)). In a manner appropriate for the dynamometer and controls being used, arrange to conduct the acceleration mode;

(4) Install smokemeter optical unit and connect it to the recorder/data collection system. Connect the engine rpm and throttle position sensing devices to the recorder/data collection system;

(5) Turn on purge air to the optical unit of the smokemeter, if purge air is used;

(6) Check and record zero and span settings of the smokemeter. (If a recorder is used, a chart speed of approximately one inch per minute shall be used.) The optical unit shall be retracted from its position about the exhaust stream if the engine is left running;

(7) Precondition the engine by operating it for 10 minutes at maximum rated horsepower;

(8) Proceed with the sequence of smoke emission measurements on the engine dynamometer as prescribed in § 86.884–7;

(9) During the test sequence of § 86.844–7, continuously record smoke measurements, engine rpm, and throttle position. (If a chart recorder is used for data collection, it shall be run at a minimum chart speed of one inch per minute during the idle mode and transitional periods, and eight inches per minute during the acceleration and lugging modes. Automatic data collection equipment, if used, shall sample at least two records per second.) The smokemeter zero and full-scale response may be rechecked during the idle mode of each test sequence. If either zero or full-scale drift is in excess of 2 percent opacity, the smokemeter controls must be readjusted and the test must be repeated;

(10) Turn off engine;

(11) Check zero and reset if necessary, and check span response of the smokemeter by inserting neutral density filters. If either zero or span drift is in excess of 2 percent opacity, the test results shall be invalidated.

§ 86.884–13 Data analysis.

The following procedure shall be used to analyze the test data:

(a) Locate the modes specified in § 86.884–7(a)(1) through (a)(4) by applying the following starting and ending criteria:

(1) The idle mode specified in § 86.884–7(a)(1) starts when engine preconditioning or the lugging mode of a preceding cycle has been completed and ends when the engine speed is raised above the idle speed.

(2) The acceleration mode specified in § 86.884–7(a)(2)(i) starts when the preceding idle mode has been completed and ends when the throttle is in the fully open position, as indicated by the throttle position trace as specified in § 86.884–7(a)(2)(ii).

(3) The acceleration mode specified in § 86.884–7(a)(2)(ii) starts when the preceding acceleration mode has been completed and ends when the engine speed reaches 85 percent of the rated speed.

(4) The transition period specified in § 86.884–7(a)(2)(iii) starts when the preceding acceleration mode has been completed and ends when the throttle is in the fully open position as indicated by the throttle position trace as specified in § 86.884–7(a)(2)(iv).

(5) The acceleration mode specified in § 86.884–7(a)(2)(iv) starts when the preceding transition period has been completed and ends when the engine speed reaches 95 percent of the rated speed.

(6) The transition period specified in § 86.884–7(a)(3)(i) starts when the preceding acceleration mode has been completed and ends when the engine speed in 50 rpm below the rated speed and the provisions of § 86.884–7(a)(3)(i) are met.

(7) The lugging mode specified in § 86.884–7(a)(3)(ii) starts when the preceding transition period has been completed and ends when the engine speed is at the intermediate speed.

(b) Determined if the test requirements of § 86.884–7 are met by applying the following modal criteria:

(1) Idle mode as specified in § 86.884–7(a)(1):

(i) Duration: 5 to 5.5 minutes.

(ii) Speed: within specification during the last four minutes of the mode.

(2) Acceleration mode as specified in § 86.884–7(a)(2)(i).

(i) Duration: three seconds or less.

(ii) Speed increase: 200±50 rpm.

(3) Acceleration mode as specified in § 86.884–7(a)(2)(ii):

(i) Linearity: ±100 rpm as specified in paragraph (c) of this section.

(ii) Duration: 3.5 to 6.5 seconds.

(iii) Throttle position: fully open until speed is at least 95 percent of the rated speed.

(4) Transition period as specified in § 86.884–7(a)(2)(iii):

(i) Throttle position: moved rapidly to, and held in, the fully closed position.

(5) Acceleration mode as specified in § 86.884–7(a)(2)(iv):

(i) Duration: 8 to 12 seconds.

(ii) Throttle position: fully open when speed is at intermediate speed.

(6) Transition period as specified in § 86.884–7(a)(3)(i):

(i) Duration: 50 to 60 seconds.

(ii) Speed during last 10 seconds within ±50 rpm of rated speed.

(iii) Corrected power during last 10 seconds: At least 95 percent of horsepower developed during zero-hour testing.

(7) Lugging mode as specified in § 86.884–7(a)(3)(ii):

(i) Linearity: ±100 rpm as specified in paragraph (c) of this section.

(ii) Duration; 30 to 40 seconds.

(iii) Speed at end: intermediate speed.

(c) Determine if the linearity requirements of § 86.884–7 were met by means of the following procedure:

(1) For the acceleration mode specified in § 86.884–7(a)(2)(ii), note the maximum deflection of the rpm trace from a straight line drawn between the starting and ending points specified in paragraph (a)(3) of this section.

(2) For the lugging mode specified in § 86.884–7(a)(3)(ii), note the maximum deflection of the rpm trace from a straight line drawn from the starting and ending points specified in paragraph (a)(7) of this section.

(3) The test results will be invalid if any deflection is greater than 100 rpm.

(4) This linearity check may be performed by direct analysis of the recorder traces, or by computer analysis of data collected by automatic data collection equipment.

(d) Analyze the smoke trace by means of the following procedure:

(1) Starting at the beginning of the first acceleration, as defined in paragraph (a)(2) of this section, and stopping at the end of the second acceleration, as defined in paragraph (a)(3) of this section, divide the smoke trace into half-second intervals. Similarly, subdivide into half-second intervals the third acceleration mode and the lugging mode as defined by paragraphs (a) (5) and (7) respectively, of this section.

(2) Determine the average smoke reading during each half-second interval.

(3) Locate and record the 15 highest half-second readings during the acceleration mode of each dynamometer cycle.

(4) Locate and record the five highest half-second readings during the lugging mode of each dynamometer cycle.

(5) Examine the average half-second values which were determined in paragraphs (d)(3) and (d)(4) of this section and record the three highest values for each dynamometer cycle.

(6) This smoke trace analysis may be performed by direct analysis of the recorder traces, or by computer analysis of data collected by automatic data collection equipment.

§ 86.884–14 Calculations.

(a) Average the 45 readings in § 86.884–13(d)(3) and designate the value as "A".

(b) Average the 15 readings in § 86.884–13(d)(4) and designate the value as "B".

(c) Average the 9 readings in § 86.884–13(d)(5) and designate the value as "C".

Subpart K—[Amended]

26. Section 86.1002–84 of Subpart K is amended by revising paragraph (b) to read as follows:

§ 86.1002–84 Definitions.

* * * * *

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

"Acceptable Quality Level" (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

"Configuration" means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the Administrator, or a subclassification of a light-duty truck engine family/emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator.

"Test Sample" means the collection of vehicles or engines of the same configuration which have been drawn from the population of engines or vehicles of that configuration and which will receive exhaust emission testing.

"Inspection Criteria" means the pass and fail numbers associated with a particular sampling plan.

"Test Engine" means an engine in a test sample.

"Test Vehicle" means a vehicle in a test sample.

27. Section 86.1003–84 of Subpart K is amended by revising paragraphs (b), (c)(1), and (f)(1)(ii), and adding a new paragraph (f)(1)(iii) to read as follows:

§ 86.1003–84 Test orders.

* * * * *

(b) The test order will be signed by the Assistant Administrator for Air, Noise and Radiation or his designee. The test order will be delivered in person by an EPA Enforcement Officer to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of the applicable section of Subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or

vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected. The test order may include alternate configurations to be selected for testing the event that engines or vehicles of the specified configuration are not available for testing because those engines or vehicles are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities. If the specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two engines per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(1) of § 86.1008–84, or one engine per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(2) of § 86.1008–84, over the expected duration of the audit, the Assistant Administrator or his designated representative may select engines or vehicles of the alternate configuration for testing. In addition, the test order may include other directions or information essential to the administration of the required testing.

* * * * *

(f) * * *

(1) * * *

(ii) For manufacturers of gasoline-fueled or diesel light-duty trucks, the number determined by dividing the projected light-duty truck sales bound for the United States market for that model year, as made by the manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations, by 300,000 and rounding to the nearest whole number, unless the projected sales are less than 150,000, in which case the number is one.

(iii) If a manufacturer submits to EPA in writing prior to or during the model year a reliable sales projection update, that update will be used for recalculating the manufacturer's annual limit of SEA test orders.

* * * * *

28. Section 86.1005–84 of Subpart K is amended by revising paragraphs (a)(2)(iii) and (iv) and adding a new paragraph (g) to read as follows:

§ 86.1005–84 Maintenance of records; submittal of information.

(a) * * *

(2) * * *

(iii) The names of all supervisory personnel involved in the conduct of the audit;

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all supervisory personnel responsible for the conduct of the repair;

* * * * * * *

(g) Whenever a manufacturer submits information pursuant to the requirements of this subpart, the manufacturer shall clearly identify over which information it wishes to assert a business confidentiality claim and shall specify the time period for which that confidentiality claim will apply. If no claim accompanies business information when it is received by EPA, it may be made available to the public by EPA without further notice to the manufacturer. If a claim is received, the information covered by the claim will be disclosed by EPA only to the extent, and by means of the procedures, specified in 40 CFR Part 2.

29. Section 86.1006–84 of Subpart K is amended by revising paragraph (h)(3) to read as follows:

§ 86.1006–84 Entry and access.

* * * * *

(h) * * *

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing, repair, service accumulation, production or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

* * * * *

30. Section 86.1007–84 of Subpart K is amended by revising paragraphs (b) and (c) to read as follows:

§ 86.1007–84 Sample selection.

* * * * *

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production process for engines or vehicles to be distributed into commerce. During the audit, the manufacturer shall inform the Administrator of any change(s) implemented in its production processes, including quality control, which may reasonably be expected to affect the emissions of the vehicles or engines selected, between the time the manufacturer is notified of a test order and the time the manufacturer finishes selecting test vehicles or engines. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, the test order will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that has not been or will not be used during the production and assembly of all other engines or vehicles of that configuration, except, that the Administrator may approve a modification in the normal assembly procedures pursuant to paragraph (b) of this section.

* * * * *

31. Section 86.1008–84 of Subpart K is amended by revising paragraphs (a)(4)(i), (d), (f), and (g), and adding a new paragraph (a)(5) to read as follows:

§ 86.1008–84 Test procedures.

(a) * * *

(4) * * *

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113–79 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

* * * * *

(5) The Administrator may, on the basis of a written application by a manufacturer, prescribe minor test procedure variations from those set forth in paragraphs (a)(1) and (a)(2) of this section for any heavy-duty engine.

* * * * *

(d) The manufacturer shall not perform any maintenance on test vehicles or engines after selection for testing, nor shall the Administrator allow deletion of any test vehicle or engine from the test sequence, unless requested by the manufacturer and approved by the Administrator before any test vehicle or engine maintenance or deletion.

* * * * *

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission test because of a malfunction, the manufacturer may request that the Administrator authorize the repair of that engine or vehicle or its deletion from the test sequence.

(g) Whenever a manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day

of receipt of the test order which test facility will be used to comply with the test order. If no test cells are available at a desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

* * * * *

32. Section 86.1009–84 of Subpart K is amended by revising paragraphs (a), (d)(5) (v) and (vi), and (d)(6), and adding a new paragraph (d)(5)(vii) to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in paragraph (a) of § 86.1008–84. Round these results, in accordance with ASTM E29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

* * * * *

(d) * * *

(5) * * *

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion;

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake-specific fuel consumption values for HDEs; and

(vii) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or light-duty trucks being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued; and

(6) The following statement and endorsement:

This report is submitted pursuant to Sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 *et seq.*, and the conditions of the test order. No emission-related changes to production processes or quality control procedures for the vehicle or engine configuration tested have been made between receipt of the test order and conclusion of the audit. All data and information reported herein is, to the best of

(Company Name) _____

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

33. Section 86.1010–84 of Subpart K is amended by revising paragraphs (c) and (d) to read as follows:

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

* * * * *

(C) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard for that pollutant shall not be considered any further for the purposes of the audit.

(d) Passing or failing of an SEA occurs when the decision is made on the last engine or vehicle required to make a decision under paragraph (c) of this section.

* * * * *

34. Section 86.1012–84 of Subpart K is amended by revising paragraphs (i)(2) and (k) (1) and (2) to read as follows:

§ 86.1012–84 Suspension and revocation of certificates of conformity.

* * * * *

(i)* * *

(1)* * *

(2) Submit a written report to the Administrator, after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

* * * * *

(k)* * *

(1) If the Administrator determines that the proposed change(s) in engine or vehicle design may have an effect on emission performance deterioration or, in the case of light-duty trucks, on fuel economy, the Administrator shall notify the manufacturer, within five (5) working days after receipt of the report in paragraph (h) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration: *Provided*, That the manufacturer has satisfied the testing requirements of paragraph (k)(1) of this section. If the subsequent audit is failed, a revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

* * * * *

35. Appendix X to Part 86 is amended by revising Table 2, to read as follows:

Appendix X—Sampling Plans for Selective Enforcement Auditing of Heavy-Duty Engines and Light-Duty Trucks

* * * * *

TABLE 2—SAMPLING PLAN FOR CODE LETTER "A"

[Sample inspection criteria]

Stage	Pass No.	Fail No.	Stage	Pass No.	Fail No.
1	(1)	(2)	16	6	11
2	(1)	(2)	17	7	12
3	(1)	(2)	18	7	12
4	0	(2)	19	8	13
5	0	(2)	20	8	13
6	1	6	21	9	14
7	1	7	22	10	14
8	2	7	23	10	15
9	2	8	24	11	15
10	3	8	25	11	16
11	3	8	26	12	16
12	4	9	27	12	17
13	5	10	28	13	17
14	5	10	29	14	17
15	6	11	30	16	17

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

* * * * *

36. Section 86.1229–85 of Subpart M is amended by revising paragraph (b)(2) to read as follows:

§ 86.1229–85 Dynamometer load determination.

* * * * *

(b) * * *

(2) The road load power used shall be determined from the following equation:

$$RLP = 0.67(H - 0.75)W + 0.00125[LVW - (N \times DW)]$$

Where:

RLP = Road Load Power at 50 mph (horsepower).
H = Vehicle overall maximum height (feet).
W = Vehicle overall maximum width (feet).
LVW = Loaded vehicle weight (pounds).
DW = Vehicle weight supported by the dynamometer (pounds).
N = Number of dynamometer rolls supporting a tire.

or the manufacturer may determine the road load power by an alternate procedure (including coastdown). Such alternate procedures shall exhibit good engineering judgement and shall be subject to review upon request by the Administrator. For vehicles which the manufacturer chooses to certify by the optional light-duty truck certification provision (§ 86.082–1(b)), the evaporative emission test procedure (and standard) will be that specified by the light-duty truck regulations.

37. Section 86.1230–85 of Subpart M is amended by revising the introductory text, to read as follows:

§ 86.1230–85 Test sequence; general requirements.

The test sequence shown in Figure M85–1 show the steps encountered as the test vehicle undergoes the test procedure. Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68°F (20°C) nor more than 86°F (30°C). The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

* * * * *

38. Section 86.1233–85 of Subpart M is amended by revising paragraph (f) to read as follows:

§ 86.1233–85 Diurnal breathing loss test.

* * * * *

(f) Immediately prior to the diurnal breathing loss test, the fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel as defined in § 86.1213–85 to the prescribed "tank fuel volume", as defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank shall be between 45 and 60°F (7.2 and 16°C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

* * * * *

39. Subpart N is revised to read as follows:

* * * * *

Subpart N—Emission Regulations for New Gasoline- and Diesel-Fueled Heavy-Duty Engines; Gaseous Exhaust Test Procedures

Sec.

86.1301–84 Scope; applicability.
86.1302–84 Definitions.
86.1303–84 Abbreviations.
86.1304–84 Section numbering; construction.
86.1305–84 Introduction; structure of subpart.
86.1306–84 Equipment required and specifications; overview.
86.1307–84 [Reserved]
86.1308–84 Dynamometer and engine equipment specifications.
86.1309–84 Exhaust gas sampling system; gasoline-fueled engines.
86.1310–84 Exhaust gas sampling and analytical system; diesel-fueled engines.
86.1311–84 Exhaust gas analytical system; CVS bag sample.
86.1312–84 [Reserved]
86.1313–84 Fuel specifications.
86.1314–84 Analytical gases.
86.1315–84 [Reserved]
86.1316–84 Calibration; frequency and overview.
86.1317–84 [Reserved]
86.1318–84 Engine dynamometer system calibrations.
86.1319–84 CVS calibration.
86.1320–84 [Reserved]
86.1321–84 Hydrocarbon analyzer calibration.
86.1322–84 Carbon monoxide analyzer calibration.
86.1323–84 Oxides of nitrogen analyzer calibration.
86.1324–84 Carbon dioxide analyzer calibration.
86.1325–84 [Reserved]
86.1326–84 Calibration of other equipment.
86.1327–84 Engine dynamometer test procedures; overview.
86.1328–84 [Reserved]
86.1329–84 [Reserved]
86.1330–84 Test sequence; general requirements.
86.1331–84 [Reserved]
86.1332–84 Engine mapping procedures.
86.1333–84 Transient test cycle generation.
86.1334–84 Pre-test engine and dynamometer preparation.
86.1335–84 Optional forced engine cool-down procedure.
86.1336–84 Engine starting and restarting.
86.1337–84 Engine dynamometer test run.
86.1338–84 Emission measurement accuracy.
86.1339–84 [Reserved]
86.1340–84 Exhaust sample analysis.
86.1341–84 Test cycle validation criteria.
86.1342–84 Calculations; exhaust emissions.
86.1343–84 [Reserved]
86.1344–84 Information required.

Authority: Sections 202, 206, 207, 208, 301(a), Clean Air Act as amended 42 U.S.C. 7521, 7524, 7541, 7542, and 7601.

Subpart N—Emission Regulations for New Gasoline- and Diesel-Fueled Heavy-Duty Engines; Gaseous Exhaust Test Procedures

§ 86.1301–84 Scope; applicability.

This subpart contains gaseous emission test procedures for gasoline- and diesel-fueled heavy-duty engines. It applies to 1984 and later model years.

§ 86.1302–84 Definitions.

The definitions in § 86.084–2 apply to this subpart.

§ 86.1303–84 Abbreviations.

The abbreviations in § 86.084–3 apply to this subpart.

§ 86.1304–84 Section numbering; construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

Example: Section § 86.1311–84 applies to the 1984 and subsequent model years until superseded. If a section § 86.1311–88 is promulgated it would take effect beginning with the 1988 model year; § 86.1311–84 would apply to model years 1984 through 1987.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

(c) Unless indicated, all provisions in this subpart apply to both gasoline- and diesel-fueled heavy-duty engines.

§ 86.1305–84 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust emission tests on gasoline- and diesel-fueled heavy-duty engines. Subpart A sets forth the testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) Four topics are addressed in this subpart. Sections 86.1306–84 through 86.1315–84 set forth specifications and equipment requirements; §§ 86.1316–84 through 86.1326–84 discuss calibration methods and frequency; test procedures are listed in §§ 86.1327–84 through 86.1341–84; calculation formulae are found in § 86.1342–84; data requirements are found in § 86.1344–84.

§ 86.1306–84 Equipment required and specifications; overview.

This subpart contains procedures for exhaust emission tests on gasoline- or diesel-fueled heavy-duty engines.

Equipment required and specifications are as follows:

(a) *Exhaust emission tests.* All engines subject to this subpart are tested for exhaust emissions. Gasoline- and diesel-fueled engines are tested identically with the exception of hydrocarbon measurements; diesel-fueled engines require a heated hydrocarbon detector, § 86.1310–84. Necessary equipment and specifications appear in §§ 86.1308–84 through 86.1311–84.

(b) *Fuel, analytical gas, and engine cycle specifications.* Fuel specifications for exhaust emission testing are specified in § 86.1313–84. Analytical gases are specified in § 86.1314–84. The heavy-duty test cycles for use in exhaust testing are described in § 86.1333–84 and specified in Appendix I to this part.

§ 86.1307–84 [Reserved]

§ 86.1308–84 Dynamometer and engine equipment specifications.

(a) *Engine dynamometer.* The engine dynamometer system must be capable of controlling engine torque and rpm simultaneously over transient cycles. The transient torque and rpm schedules described in § 86.1333–84 and specified in Appendix I to this part ((f) (1) and (2)) must be followed within the accuracy requirements specified in § 86.1341–84. In addition to these general requirements, the dynamometer readout signals for speed and torque shall meet the following accuracy specifications:

(1) Engine speed readout shall be accurate to within ±2 percent of the absolute standard value, as defined in paragraph (d) of this section.

(2) Engine flywheel torque readout shall be accurate to either within ±3 percent of the NBS "true" value torque (as defined in paragraph (e) of this section), or the following accuracies:

(i) ±2.5 ft-lbs. of the NBS "true" value if the full scale value is 550 ft-lbs. or less.

(ii) ±5 ft-lbs. of the NBS "true" value if the full scale value is 1050 ft-lbs. or less.

(iii) ±10 ft-lbs. of the NBS "true" value if the full scale value is 1050 ft-lbs.

(3) *Option:* Internal dynamometer signals (i.e., armature current, etc.) may be used for torque measurement provided that it can be shown that the engine flywheel torque during the test cycle conforms to the accuracy specifications in paragraph (a) of this section. Such a measurement system must include compensation for increased or decreased flywheel torque due to the armature inertia during accelerations and decelerations in the test cycle.

(b) *Cycle verification equipment.* In order to verify that the test engine has followed the test cycle correctly, the dynamometer readout signals for speed and torque must be collected in a manner that allows a statistical correlation between the actual engine performance and the test cycle (See § 86.1341–84). Normally this collection process would involve conversion of analog dynamometer signals into digital values for storage in a computer. The conversion of dynamometer readout values into values (computer or other) that are used to evaluate the validity of engine performance in relation to the test cycle shall be performed in a manner such that:

(1) Speed values used for cycle evaluation are accurate to within ±2 percent of the dynamometer speed readout values.

(2) Engine flywheel torque values used for cycle evaluation are accurate to within ±2 percent of the dynamometer torque readout value.

(c) *Option:* For some systems it may be more convenient to combine the tolerances in paragraphs (a) and (b) of this section. This is permitted if the root mean square method (RMS) is used. The RMS values would then refer to accuracy in relationship to absolute standard or to NBS "true" values.

(1) Speed values used for cycle evaluation shall be accurate to within ±2.8 percent of the absolute standard values, as defined in paragraph (d) of this section.

(2) Engine flywheel torque values used for cycle evaluation shall be accurate to within ±3.6 percent of NBS "true" values, as determined in paragraph (e) of this section.

(d) *Speed calibration equipment.* A 60-tooth (or greater) wheel in combination with a common mode rejection frequency counter is considered an absolute standard for engine or dynamometer speed.

(e) *Torque calibration equipment.* Two techniques are allowed for torque calibration. Alternate techniques may be used if shown to yield equivalent accuracies. The NBS "true" value torque is defined as the torque calculated by taking the product of an NBS traceable weight or force and a sufficiently accurate horizontal lever arm distance, corrected for the hanging torque of the lever arm.

(1) The lever-arm dead-weight technique involves the placement of known weights at a known horizontal distance from the center of rotation of the torque measuring device. The equipment required is:

(i) *Calibration weights.* A minimum of six calibration weights for each range of torque measuring device used are required. The weights must be approximately equally spaced and each must be traceable to NBS weights. Laboratories located in foreign countries may certify calibration weights to local government bureau standards. Certification of weight by state government Bureau of Weights and Measures is acceptable. Effects of changes in gravitational constant at the test site may be accounted for if desired.

(ii) *Lever arm.* A lever arm with a minimum length of 24 inches is required. The horizontal distance from the centerline of the engine torque measurement device to the point of weight application shall be accurate to within ±0.10 inches. The arm must be balanced, or the hanging torque of the arm must be known to within ±0.1 ft-lbs.

(2) The transfer technique involves the calibration of a master load cell (i.e., dynamometer case load cell). This calibration can be done with known calibration weights at known horizontal distances, or by using a hydraulically actuated precalibrated master load cell. This calibration is then transferred to the flywheel torque measuring device. The technique involves the following steps:

(i) A master load cell shall be either precalibrated or be calibrated per paragraph (e)(1)(i) of this section with known weights traceable to NBS, and used with the lever arm(s) specified in paragraph (e)(2)(ii) of this section. The dynamometer should be either running or vibrated during this calibration to minimize static hysteresis.

(ii) A lever arm(s) with a minimum length of 24 inches is (are) required. The horizontal distances from the centerline of the master load cell, to the centerline of the dynamometer, and to the point of weight or force application shall be accurate to within ±0.10 inches. The arm(s) must be balanced or the net hanging torque of the arm(s) must be known to within ±0.1 ft.-lbs.

(iii) Transfer of calibration from the master load cell to the flywheel torque measuring device shall be performed with the dynamometer operating at a constant speed. The flywheel torque measurement device readout shall be calibrated to the master load cell torque readout at a minimum of six loads approximately equally spaced across the full useful ranges of both measurement devices. (Note that good engineering practice requires that both devices have approximately equal useful ranges of torque measurement.) The transfer calibration shall be performed in a manner such that the

accuracy requirements of paragraph (a)(2) of this section for the flywheel torque measurement device readout be met or exceeded.

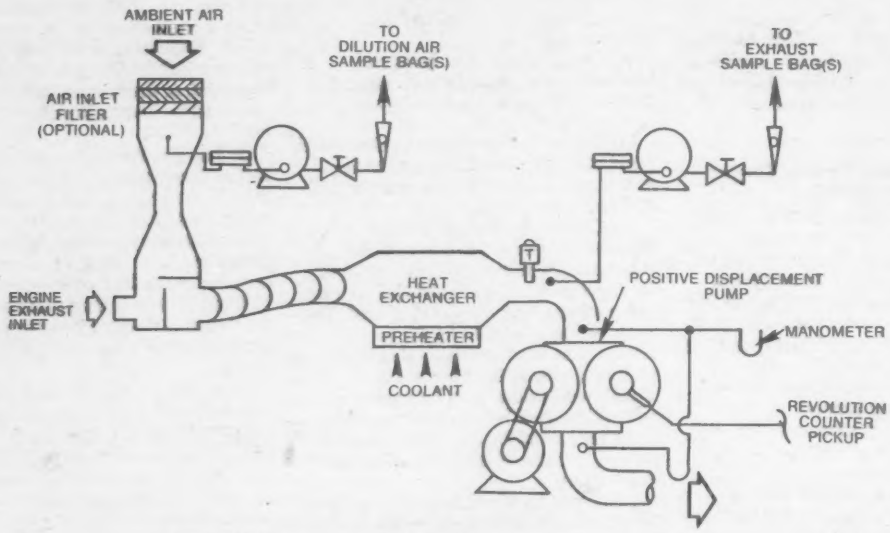
(3) Other techniques may be used if shown to yield equivalent accuracy.

(f) *Diesel engines only.* If direct measurement of mass fuel consumption is chosen as an option in lieu of dilute exhaust CO_2 measurement, the fuel measurement device shall be accurate to within ±2 percent of actual mass fuel flow.

§ 86.1309–84 Exhaust gas sampling system; gasoline-fueled engines.

(a)(1) *General.* The exhaust gas sampling system is designed to measure the true mass emissions of engine exhaust. In the CVS concept of measuring mass emissions, two conditions must be satisfied: The total volume of the mixture of exhaust and dilution air must be measured, and a continuously proportioned sample of volume must be collected for analysis. Mass emissions are determined from the sample concentration and total flow over the test period.

(2) *Positive displacement pump.* The positive displacement pump-constant volume sampler (PDP–CVS), Figure N84–1, meters total dilute exhaust flow at a constant temperature and pressure through the pump. The total volume is measured by counting the pump revolutions. The proportional sample is achieved by sampling at a constant flow rate.

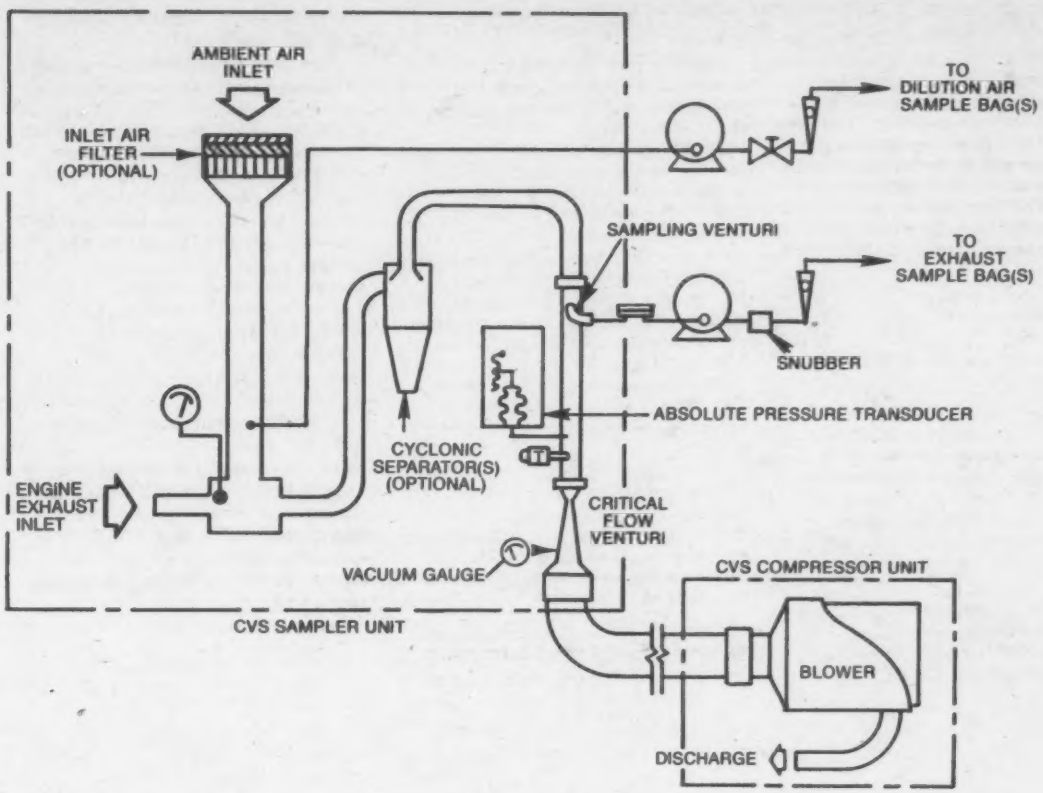


(SEE FIG. N84-5 FOR SYMBOL LEGEND)

FIGURE N84-1 — EXHAUST GAS SAMPLING SYSTEM PDP-CVS

FOR GASOLINE FUELED ENGINES

(3) *Critical flow venturi.* The operation of the critical flow venturi constant volume sampler (CFV–CVS), Figure N84–2, is based upon the principles of fluid dynamics associated with critical flow. The CFV system is commonly called a constant volume system (CVS) even though the flow varies. It would be more proper to call the critical flow venturi (CFV) system a constant proportion sampling system since proportional sampling throughout temperature excursions is maintained by use of a small CFV in the sample line. The variable mixture flow rate is maintained at choked flow, which is inversely proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at both venturi inlets, the sample volume is proportional to the total volume.



(SEE FIG. N84-5 FOR SYMBOL LEGEND)

FIGURE N84-2 — EXHAUST GAS SAMPLING SYSTEM (CFV-CVS)

FOR GASOLINE FUELED ENGINES

(4) *Other systems.* Other sampling and/or analytical systems including the systems described in § 86.1310–84 for diesel-fueled engines may be used if shown to yield equivalent results, and if approved in advance by the Administrator.

(5) Since various configurations can produce equivalent results, exact conformance with these drawings is not required. Additional components such as instruments, valves, solenoids, pumps and switches may be used to provide additional information and coordinate the functions of the component systems. Other components such as snubbers, which are not needed to maintain accuracy on some systems, may be excluded if their exclusion is based upon good engineering judgment.

(b) *Component description, PDP–CVS.* The PDP–CVS, Figure N84–1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling system, and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

(1) Exhaust system backpressure must not be artificially lowered by the CVS or dilution air inlet system. Measurements to verify this should be made in the raw exhaust immediately upstream of the inlet to the CVS. (For diesels, this measurement should be made immediately upstream of the backpressure set device.) This verification requires the continuous measurement and comparison of raw exhaust static pressure observed during a transient cycle, both with and without the operating CVS. Static pressure measured with the operating CVS system shall remain within ±5 inches of water (1.2 kPa) of the static pressure measured without connection to the CVS, at identical moments in the test cycle. (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.) This requirement is essentially a design specification for the CVS/dilution air inlet system, and should be performed as often as good engineering practice dictates (e.g., after installation of an uncharacterized CVS, addition of an unknown inlet restriction on the dilution air, etc.).

(2) The gas mixture temperature, measured at a point immediately ahead of the positive displacement pump and after the heat exchanger, shall be maintained within ±10°F (5.6°C) of the average operating temperature observed during the test. (The average operating temperature may be estimated from the average operating temperature from similar tests.) The temperature measuring system (sensors and readout) shall have an accuracy and precision of ±3.4°F (1.9°C).

(3) The pressure gauges shall have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow.

(c) *Component description, CFV–CVS.* The CFV–CVS, Figure N84–2 consists of a dilution air filter (optional) and mixing assembly, optional cyclonic particulate separator(s), sampling venturi, critical flow venturi, sampling system, and assorted valves, pressure and temperature sensors. The CFV–CVS shall conform to the following requirements:

(1) Static pressure variations in the raw exhaust shall conform to the specifications detailed in paragraph (b)(1) of this section.

(2) The temperature measuring system (sensors and readout) shall have an accuracy and precision of ±3.4°F (1.9°C). The temperature measuring system used in a CVS without a heat exchanger shall have a response time of 1.50 seconds to 62.5 percent of a temperature change (as measured in hot silicone oil). There is no response time requirement for a CVS equipped with a heat exchanger.

(3) The pressure measuring system (sensors and readout) shall have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to prevent water condensation in the system.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow.

§ 86.1310–84 Exhaust gas sampling and analytical system; diesel-fueled engines.

(a) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of both gaseous and particulate emissions in the exhaust of heavy-duty diesel-fueled engines. This system utilizes the CVS concept (described in § 86.1309–84) of measuring mass emissions of NO_x, CO, CO_2, and particulate. A continuously integrated system is required for HC measurement, and is allowed for NO_x, CO, and CO_2. The mass of gaseous emissions is determined from the sample concentration and total flow over the test period. As an option, the measurement of total fuel mass consumed over a cycle may be substituted for the exhaust measurement of CO_2. General requirements are as follows:

(1) This sampling system requires the use of a PDP–CVS, or a CFV–CVS with either a heat exchanger or electronic flow compensation. Figure N84–3 is a schematic drawing of the PDP system. Figure N84–4 is a schematic drawing of the CFV system.

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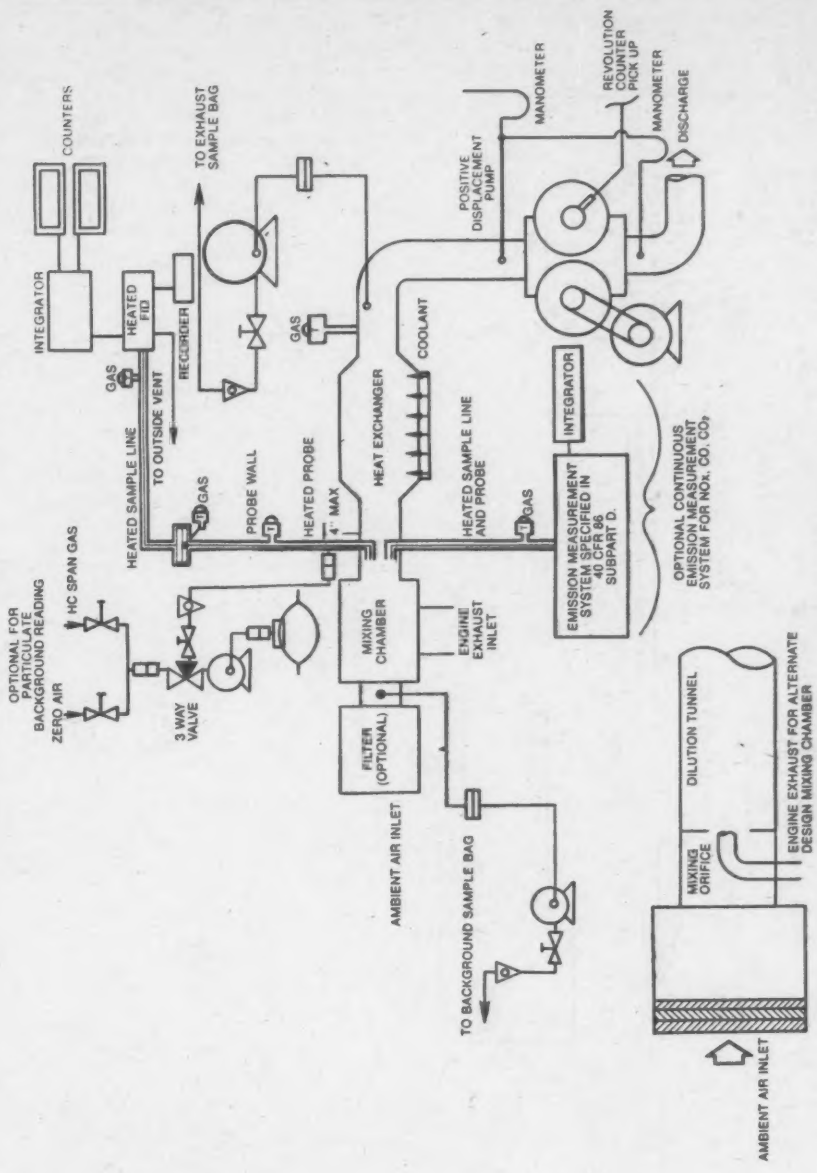


FIGURE N84-3
GASEOUS EMISSIONS SAMPLING SYSTEM (PDP-CVS)
(FOR DIESEL ENGINES ONLY)
(SEE FIGURE N84-5 FOR SYMBOL LEGEND)

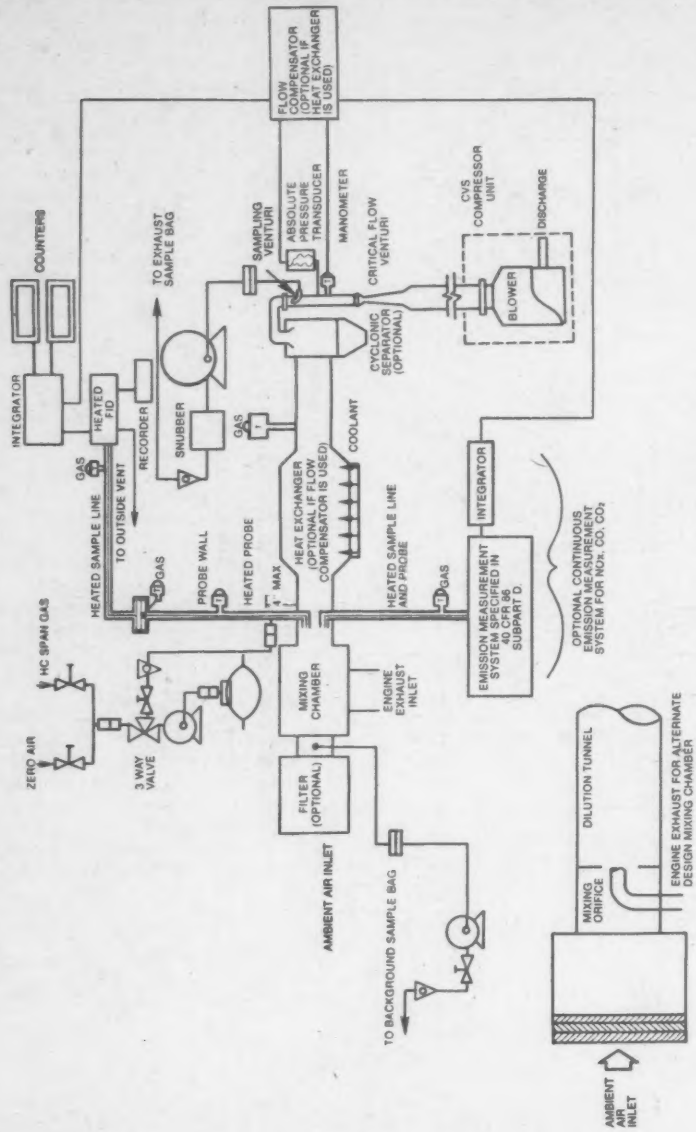


FIGURE N84-4
GASEOUS EMISSIONS SAMPLING SYSTEM (CFV-CVS)
(FOR DIESEL ENGINES ONLY)
(SEE FIGURE N84-5 FOR SYMBOL LEGEND)

BILLING CODE 6560-50-C

(2) The HC analytical system for diesel-fueled engines requires a heated flame ionization detector (HFID) and heated sample system.

(i) The HFID sample must be taken directly from the diluted exhaust stream through a heated probe and integrated continuously over the test cycle. Unless compensation for varying flow is made, the HFID must be used with a constant flow system to ensure a representative sample.

(ii) The heated probe shall be located downstream of a mixing chamber that provides a uniform sample distribution across the CVS duct.

(iii) The dilution tunnel similar to those used for diesel particulate sampling may be used as a mixing chamber.

(3) Bag sampling (§ 86.1309–84) and analytical (§ 86.1311–84) capabilities as shown in N84–3 (or Figure N84–4) are required.

(4) *Option.* Continuously integrated measurements of diluted NOx, CO, and CO_2 are permitted and can be used to determine compliance with applicable emission standards. Minimum requirements and technical specifications are given in paragraph (b)(5) of this section.

(5) Since various configurations can produce equivalent results, exact conformance with these drawings is not required. Additional components such as instruments, valves, solenoids, pumps, and switches may be used to provide additional information and coodinate the functions of the component systems. Other components such as snubbers, which are not needed to maintain accuracy on some systems, may be excluded if their exclusion is based upon good engineering judgment.

(6) Other sampling and/or analytical systems may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(b) *Component description.* The components necessary for diesel exhaust sampling shall meet the following requirements:

(1) The PDP-CVS, shall conform to all of the requirements listed for the exhaust gas PDP-CVS (§ 86.1309–84(b)). The flow capacity of the CVS must be sufficient to maintain the diluted exhaust stream at a temperature of 375°F (191°C) or less at the sampling zone.

(2) The CFV-CVS shall conform to all of the requirements listed for the exhaust gas CFV-CVS (§ 86.1309–84(c)), along with the following requirements:

(i) The flow capacity of the CVS must be sufficient to maintain the diluted exhaust stream at a temperature of 375°F (191°C) or less at the sampling zone.

(ii) A heat exchanger or an electronic flow compensator is required (see Figure N84–4).

(iii) When a heat exchanger is used, the gas mixture temperature, measured at a point immediately ahead of the critical flow venturi, shall be within ±20 °F (11°C) of the average operating temperature observed during the test. The temperature measuring system (sensors and readout) shall have an accuracy and precision of ±3.4°F (1.9°C). For systems utilizing a flow compensator to maintain proportional flow, the requirement for maintaining constant temperature is not necessary.

(3) Continuous HC measurement system.

(i) The continuous HC sample system (as shown in Figure N84–3 or N84–4) uses an "overflow" zero and span system. In this type of system, excess zero or span gas spills out of the probe when zero and span checks of the analyzer are made. The "overflow" system may also be used to calibrate the HC analyzer per § 86.1321–84(b), although this is not required.

(ii) No other analyzers may draw a sample from the continuous HC sample probe, line or system, unless a common sample pump is used for all analyzers and the single sample line system design reflects good engineering practice.

(iii) The overflow gas flow rate into the sample line shall be at least 105 percent of the sample system flow rate.

(iv) The overflow gases shall enter the heated sample line no farther than 4 inches from the outside surface of the CVS duct or dilution tunnel.

(v) The continuous hydrocarbon probe shall be:

(A) Installed in the dilute stream at a point where the dilution air and exhaust are well mixed.

(B) Sufficiently distant (radially) from other probes and the tunnel wall so as to be free from the influence of any wakes of eddies.

(C) Heated over the entire length to maintain a 375° ±20°F (191°±11°C) *wall* temperature. (Insulation and other techniques may be used to maintain the temperature.)

(D) 0.19 in (0.48 cm) minimum inside diameter.

(E) Free from cold spots (i.e., free from spots where the probe wall temperature is less than 355°F (180°C)).

(vi) The dilute exhaust gas flowing in the total hydrocarbon sample system shall be:

(A) At 375° ±10°F (191°±6°C) immediately before the heated filter. This *gas* temperature will be determined by a temperature sensor located immediately upstream of the filter. The sensor and its readout shall have an accuracy and precision of ±3.4°F (1.9°C).

(B) At 375° ±10° F (191°±6°C) immediately before the HFID. This *gas* temperature will be determined by a temperature sensor located at the exit of the heated sample line. The sensor and its readout shall have an accuracy and precision of ±3.4°F (1.9°C).

(vii) The response time of the continuous measurement system shall be no greater than:

(A) 1.5 seconds from an instantaneous step change at the port entrance to the analyzer to within 95 percent of the step change.

(B) 20.0 seconds from an instantaneous step change at the entrance to the sample probe or overflow span gas port to within 95 percent of the step change. Analysis system response time shall be coordinated with CVS flow fluctuations and sampling time/test cycle offsets if necessary.

(C) For the purpose of verification of response times, the step change shall be at least 60 percent of full-scale chart deflection.

(4) Mixing chamber.

(i) The mixing chamber shall be designed to fully mix the dilution air and exhaust gas while minimizing HC hang up in the system between the entrance of the exhaust gas into the system and the HC sample probe.

(ii) A dilution tunnel similar to those used for diesel particulate testing may be used as a mixing chamber (See figures N84–3 and N84–4). It shall conform to the following criteria:

(A) The tunnel shall be of small enough diameter to cause turbulent flow (Reynolds Number greater than 4000) and of sufficient length to cause complete mixing of the exhaust and dilution air;

(B) The engine exhaust shall be directed downstream at the point where it is introduced into the dilution tunnel;

(C) The tunnel shall be at least 18.0 inches (45.7 cm) in diameter;

(D) The tunnel shall be constructed of electrically conductive material which does not react with the exhaust components, and electrically grounded;

(E) The temperature of the diluted exhaust stream inside of the dilution tunnel shall be sufficient to prevent water condensation;

(F) The continuous hydrocarbon probe shall be installed in the dilution tunnel at a point where the dilution air and exhaust are well mixed (i.e., approximately 10 tunnel diameters

downstream of the point where the exhaust gas enters the dilution tunnel);

(G) All other factors of the continuous HC measurement system (paragraph (b)(3) of this section) shall meet the requirements specified in this subpart for diesel HC measurement systems.

(5) Optional continuously integrated NO_x, CO, and CO_2 measurement system.

(i) The sample probe shall:

(A) Be in the same plane as the continuous HC probe, but shall be sufficiently distant (radially) from other probes and the tunnel wall so as to be free from the influences of any wakes or eddies.

(B) Be heated and insulated over the entire length, to prevent water condensation, to a minimum temperature of 55°C (131°F). Sample *gas* temperature immediately before the first filter in the system shall be at least 55°C (131°F).

(ii) The continuous NO_x, CO, or CO_2 sampling and analysis system shall conform to the specifications of 40 CFR Part 86, Subpart D, with the following exceptions and revisions:

(A) The system components required to be heated by Subpart D need only be heated to prevent water condensation; the minimum component temperature shall be 55°C (131°F).

(B) The system response defined in § 86.329–79 shall be no greater than 20.0 seconds. Analysis system response time shall be coordinated with CVS flow fluctuations and sampling time/test cycle offsets if necessary.

(C) Alternative NO_x measurement techniques outlined in § 86.346–79 are not permitted for NO_x measurement in this Subpart.

(D) All analytical gases shall conform to the specifications of § 86.1314–84.

(E) Any range on a linear analyzer below 155 ppm shall have and use a calibration curve conforming to § 86.330–79.

(F) The measurement accuracy requirements specified in § 86.338–79 are superseded by those specified in § 86.1338–84.

(iii) The chart deflections of analyzers with non-linear calibration curves shall be converted to concentration values by the calibration curve(s) specified in Subpart D (§ 86.330–79) before flow correction (if used) and subsequent integration takes place.

§ 86.1311–84 Exhaust gas analytical system; CVS bag sample.

(a) *Schematic drawings.* Figure N84–5 is a schematic drawing of the exhaust gas analytical system used for analyzing CVS bag samples from either gasoline- or diesel-fueled engines. Since various configurations can produce accurate results, exact conformance with the drawing is not required. Additional components such as instruments, valves, solenoids, pumps and switches may be used to provide additional information and coordinate the functions of the component systems. Other components such as snubbers, which are not needed to maintain accuracy in some systems, may be excluded if their exclusion is based upon good engineering judgment.

(b) *Major component description.* The analytical system, Figure N84–5, consists of a flame ionization detector (FID) for the measurement of hydrocarbons, nondispersive infrared analyzers (NDIR) for the measurement of carbon monoxide and carbon dioxide and a chemiluminescence analyzer (CL) for the measurement of oxides of nitrogen.

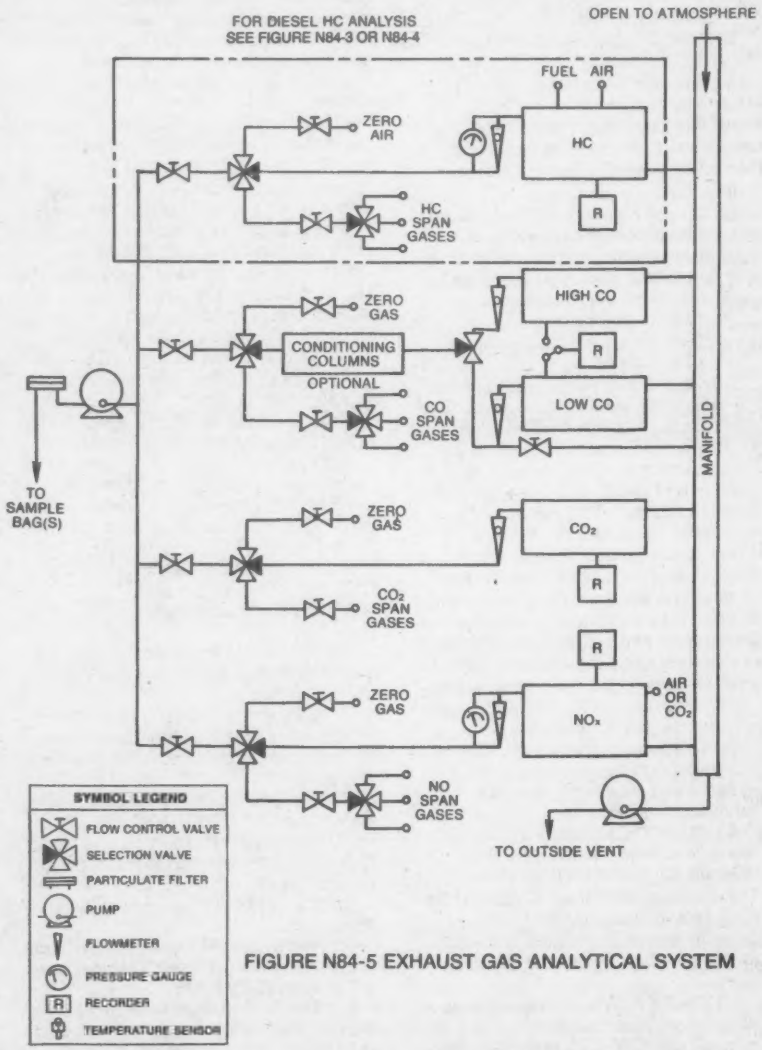


FIGURE N84-5 EXHAUST GAS ANALYTICAL SYSTEM

The exhaust gas analytical system shall conform to the following requirements:

(1) The CL requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(2) The carbon monoxide (NDIR) analyzer may require a sample conditioning column containing $CaSO_4$ or dessicating silica gel to remove water vapor, and containing ascarite to remove carbon dioxide from the CO analysis stream.

(i) If CO instruments are used which are essentially free of CO_2 and water vapor interference, the use of the conditioning column may be deleted. (See §§ 86.1322–84 and 86.1342–84.)

(ii) A CO instrument will be considered to be essentially free of CO_2 and water vapor interference if its response to a mixture of 3 percent CO_2 in N_2 which has been bubbled through water at room temperature produces an equivalent CO response, as measured on the most sensitive CO range, which is less than 1 percent of full scale CO concentration on ranges above 300 ppm full scale or less than 3 ppm on ranges below 300 ppm full scale. (See § 86.1322–84.)

(c) *Alternate analytical systems.* Analysis systems meeting the specifications of 40 CFR Part 86 Subpart D may be used for testing required under this subpart, with the exception of §§ 86.346–79 and 86.347–79, provided that the Subpart D systems meet the specifications of this subpart. Heated analyzers may be used in their heated configuration.

(d) *Other analyzers and equipment.* Other types of analyzers and equipment may be used if shown to yield equivalent results and if approved in advance by the Administrator.

§ 86.1312–84 [Reserved]

§ 86.1313–84 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the specifications listed in Table N84–1 will be used by the Administrator in exhaust emission testing. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the lead and octane specifications do not apply.

TABLE N84–1

Item	ASTM	Leaded	Unleaded
Octane, research, minimum.	D2699	98	93
Sensitivity (minimum)		7.5	7.5
Pb. (organic), gm/U.S. gallon.		[1] 1.4	0.00–0.05
Distillation range:			
IBP, °F	D86	75–95	75–95
10 percent point, °F	D86	120–135	120–135
50 percent point, °F	D86	200–230	200–230
90 percent point, °F	D86	300–325	300–325
EP, °F (maximum)	D86	415	415
Sulphur, weight percent, (max).	D1266	0.10	0.10
Phosphorus, gm/U.S. gallon (max).		0.01	0.005
RVP, psi	D323	8.7–9.2	8.7–9.2
Hydrocarbon composition:			
Olefins, percent, (max).	D1319	10	10
Aeromatics, percent (max).	D1319	35	35
Saturates	D1319	[2]	[2]

[1] Minimum.
[2] Remainder.

(2) Gasoline representative of commercial gasoline which is generally available through retail outlets shall be used in service accumulation. For leaded fuel the minimum lead content shall be equal to the average lead content found in regular leaded gasoline in the fuel survey prescribed by the Administrator. Where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use of gasoline with a different lead content. The octane rating of the gasoline used shall be not higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers for unleaded fuel and 7.0 octane numbers for leaded fuel, where sensitivity is defined as the Research number minus the Motor octane number. The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.084–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean an bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, and dispersant.

(2) Diesel fuel meeting the specifications in Table N84–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of diesel fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

TABLE N84–2

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	48–54	42–50
Distillation range:			
IBP °F	D86	330–390	340–400
10 percent point, °F	D86	370–430	400–460
50 percent point, °F	D86	410–480	470–540
90 percent point, °F	D86	460–520	550–610
EP, ° F	D86	500–560	580–660
Gravity, API	D287	40–44	33–37
Total Surfur, percent	D129 or D2622	0.05–0.20	0.2–0.5
Hydrocarbon composition:			
Aromatics, percent	D1319	[1]8	[1]27
Parafins, Naphthenes, Olefins.	D1319	([2])	([2])
Flashpoint, °F (minimum).	D93	120	130
Viscosity, Centistokes	D445	1.6–2.0	2.0–3.2

[1] Minimum.
[2] Remainder.

(3) Diesel fuel meeting the specifications in Table N84–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used:

TABLE N84–3

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	42–56	30–58
Distillation range:			
90 percent point, °F	D86	440–530	540–630
Gravity API	D287	39–45	30–42
Total sulfur, percent (minimum).	D129 or D2622	0.05	0.2
Flashpoint, °F (minimum).	D93	120	130
Viscosity, centistokes	D455	1.2–2.2	1.5–4.5

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided that:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service;

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability;

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.084–21(b)(3).

§ 86.1314–84 Analytical gases.

(a) Gases for the CO and CO_2 analyzers shall be single blends of CO

and CO_2, respectively, using nitrogen as the diluent.

(b) Gases for the hydrocarbon analyzer shall be single blends of propane using air as the diluent.

(c) Gases for the NO_x analyzer shall be single blends of NO named as NO_x with a maximum NO_2 concentration of 5 percent of the nominal value using nitrogen as the diluent.

(d) Fuel for the FID shall a blend of 40 ±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response; 98 to 100 percent hydrogen fuel may be used with advance approval of the Administrator.

(e) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(f)(1) "Zero-grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(2) Calibration gases shall be accurate to within ±1 percent of NBS gas standards, or other gas standards which have been approved by the Administrator.

(3) Span gases shall be accurate to within ±2 percent of NBS gas standards, or other gas standards which have been approved by the Administrator.

(g) The use of precision blending devices (gas dividers) to obtain the required calibration gas concentrations is acceptable, provided that the blended gases are accurate to within ±1.5 percent of NBS gas standards, or other gas standards which have been approved by the Administrator. This accuracy implies that primary gases used for blending must be "named" to an accuracy of at least ±1 percent, traceable to NBS or other approved gas standards.

§ 86.1315-84 [Reserved]

§ 86.1316-84 Calibrations; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.1318-84 through 86.1326-84.

(b) At least monthly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Calibrate the hydrocarbon analyzer, carbon dioxide analyzer, carbon monoxide analyzer, and oxides of nitrogen analyzer.

(2) Calibrate the engine dynamometer flywheel torque and speed measurement transducers, and calculate the feedback signals to the cycle verification equipment.

(c) At least weekly or after any maintenance which could alter calibration, the following checks shall be performed:

(1) Check the oxides of nitrogen converter efficiency, and;

(2) Perform a CVS system verification.

(3) Check the shaft torque feedback signal at steady-state conditions by comparing shaft torque feedback to dynamometer beam load.

(d) The CVS positive displacement pump or critical flow venturi shall be calibrated following initial installation, major maintenance or as necessary when indicated by the CVS system verification (described in § 86.1319-84).

(e) Sample conditioning columns, if used in the CO analyzer train, should be checked at a frequency consistent with observed column life or when the indicator of the column packing begins to show deterioration.

§ 86.1317-84 [Reserved]

§ 86.1318-84 Engine dynamometer system calibrations.

(a) The engine flywheel torque and engine speed measurement transducers shall be calibrated at least once each month with the calibration equipment described in § 86.1308-84.

(b) The engine flywheel torque feedback signals to the cycle verification equipment shall be electronically checked before each test, and adjusted as necessary.

(c) Other engine dynamometer system calibrations shall be performed as dictated by good engineering practice.

(d) When calibrating the engine flywheel torque transducer, any lever arm used to convert a weight or a force through a distance into a torque shall be used in a horizontal position (±5 degrees).

(e) Calibrated resistors may not be used for engine flywheel torque transducer calibration, but may be used to span the transducer prior to engine testing.

§ 86.1319-84 CVS calibration.

(a) The CVS is calibrated using an accurate flowmeter and restrictor valve. The flowmeter calibration shall be traceable to the NBS, and will serve as the reference value (NBS "true" value) for the CVS calibration. (Note: In no case should an upstream screen or other restriction which can affect the flow be used ahead of the flowmeter unless calibrated throughout the flow range with such a device.) The CVS calibration procedures are designed for use of a "metering venturi" type flowmeter. Large radius or ASME flow nozzles are considered equivalent if traceable to NBS measurements. Other measurement systems may be used if shown to be equivalent under the test conditions in this action and traceable to NBS measurements. Measurements of the various flowmeter parameters are recorded and related to flow through the CVS. Procedures used by EPA for both PDP- and CFV-CVS's are outlined below. Other procedures yielding equivalent results may be used if approved in advance by the Administrator.

(b) After the calibration curve has been obtained, verification of the entire system may be performed by injecting a known mass of gas into the system and comparing the mass indicated by the system to the true mass injected. An indicated error does not necessarily mean that the calibration is wrong, since other factors can influence the accuracy of the system (e.g. analyzer calibration, leaks, or HC hangup). A verification procedure is found in paragraph (e) of this section.

(c) *PDP calibration.* (1) The following calibration procedure outlines the equipment, the test configuration, and the various parameters which must be measured to establish the flow rate of the CVS pump.

(i) All the parameters related to the pump are simultaneously measured with the parameters related to a flowmeter which is connected in series with the pump.

(ii) The calculated flow rate, ft ^{3}/min., (at pump inlet absolute pressure and temperature) can then be plotted versus a correlation function which is the value of a specific combination of pump parameters.

(iii) The linear equation which relates the pump flow and the correlation function is then determined.

(iv) In the event that a CVS has a multiple speed drive, a calibration for each range used must be performed.

(2) This calibration procedure is based on the measurement of the absolute values of the pump and flowmeter parameters that relate the flow rate at each point. Two conditions must be maintained to assure the accuracy and integrity of the calibration curve:

(i) The temperature stability must be maintained during calibration. (Flowmeters are sensitive to inlet temperature oscillations; this can cause the data points to be scattered. Gradual changes in temperature are acceptable as long as they occur over a period of several minutes.)

(ii) All connections and ducting between the flowmeter and the CVS

pump must be absolutely void of leakage.

(3) During an exhaust emission test the measurement of these same pump parameters enables the user to calculate the flow rate from the calibration equation.

(4) Connect a system as shown in Figure N84–6. Although particular types of equipment are shown, other configurations that yield equivalent results may be used if approved in advance by the Administrator. For the system indicated, the following measurements and accuracies are required:

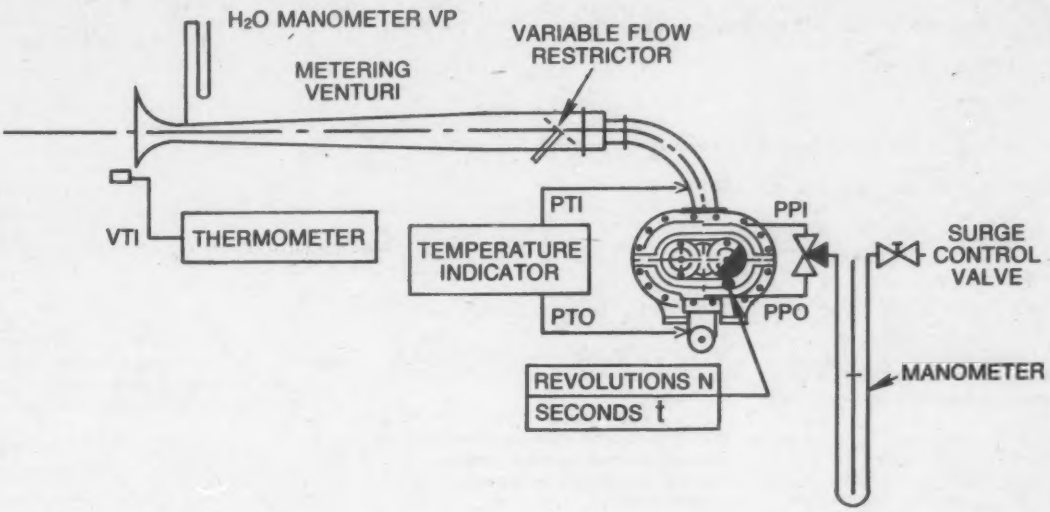


FIGURE N84-6 — PDP-CVS CALIBRATION CONFIGURATION

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Sensor-readout tolerances
Barometric pressure (corrected)	P_B	in. Hg (kPa)	±.10 in. Hg (±.340 kPa).
Ambient temperature	T_A	°F (°C)	±.5°F (±.28°C).
Air temperature into metering venturi	ETI	°F (°C)	±2.0°F (±1.11°C).
Pressure drop between the inlet and throat of metering venturi.	EDP	in. H2O (kPa)	±.05 in. H_2O (±.012 kPa).
Air flow	Q_S	Ft³/min. (m³/min.)	±.5% of NBS "true" value.
Air temperature at CVS pump inlet	PTI	°F (°C)	±2.0 °F (±1.11°C).
Pressure depression at CVS pump inlet	PPI	in. Fluid (kPa)	±.13 in. Fluid (±.055 kPa).
Specific gravity of manometer fluid (1.75 oil)	Sp. G		
Pressure head at CVS pump outlet	PPO	in. Fluid (kPa)	±.13 in. Fluid (±.055 kPa).
Air Temperature at CVS pump outlet (optional)	PTO	°F (°C)	±2.0°F (±1.11°C).
Pump revolutions during test period	N	Revs	±1 Rev.
Elapsed time for test period	t	s	±.5 s.

(5) After the system has been connected as shown in Figure N84–6, set the variable restrictor in the wide open position and run the CVS pump for 20 minutes. Record the calibration data.

(6) Reset the restrictor valve to a more restricted condition in an increment of pump inlet depression that will yield a minimum of six data points for the total calibration. Allow the system to stabilize for 3 minutes and repeat the data acquisition.

(7) *Data analysis:*

(i) The air flow rate, Q_s, at each test point is calculated in standard cubic feet per minute (68°F, 29.92″Hg) from the flowmeter data using the manufacturer's prescribed method.

(ii) The air flow rate is then converted to pump flow, V_o, in cubic feet per revolution at absolute pump inlet temperature and pressure:

$$V_o = \frac{Q_s}{n} \times \frac{T_p}{528} \times \frac{29.92}{P_p}$$

Where:

V_o = Pump flow, ft³/revolution (m³/revolution) at T_p, P_p

Q_s = Meter air flow rate in standard cubic feet per minute, standard conditions are 68°F, 29.92 inches Hg (20°C, 101.3 kPa)

n = Pump speed in revolutions per minute

T_p = Pump inlet temperature °R(°K)
= PTI + 460 (°R), or
= PTI + 273 (°K)

P_p = Absolute pump inlet pressure, inches Hg (kPa)
= P_B − PPI (Sp. Gr./13.5955) and
= P_B − PPI for SI units

Where:

P_B = barometric pressure, inches Hg (kPa)

PPI = Pump inlet depression, inches fluid (kPa)

Sp. Gr. = Specific gravity of manometer fluid

(iii) The correlation function at each test point is then calculated from the calibration data.

$$X_o = \frac{1}{n}\sqrt{\frac{\Delta P}{P_e}}$$

Where:

X_o = correlation function.

ΔP = The pressure differential from pump inlet to pump outlet, inches Hg (kPa).

$= P_e - P_p$

P_e = Absolute pump outlet pressure, inches Hg (kPa)

$= P_B + PPO\ (Sp.\ Gr./13.5955)$ and

$= P_B + PPO$ for SI units

Where:

PPO = Pressure head at pump outlet, inches fluid (kPa).

(iv) A linear least square fit is performed to generate the calibration equation which has the form:

$V_o = D_o - M(X_o)$

D_o and M are the slope and intercept constants describing the regression line.

(8) A CVS system that has multiple speeds should be calibrated on each speed used. The calibration curves generated for the ranges will be approximately parallel and the intercept values, D_o, will increase as the pump flow range decreases.

(9) If the calibration has been performed carefully, the calculated values from the equation will be within ±0.50 percent of the measured value of V_o. Values of M will vary from one pump to another, but values of D_o for pumps of the same make, model and range should agree within ±3 percent of each other. Particulate influx overtime will cause the pump slip to decrease, as reflected by lower values for M. Calibrations should be performed at pump start-up and after major maintenance to assure the stability of the pump slip rate. Analysis of mass injection data will also reflect pump slip stability.

(d) *CFV calibration.* (1) Calibration of the CFV is based upon the flow equation for a critical venturi. Gas flow is a function of inlet pressure and temperature:

$$Q_s = \frac{K_v P}{\sqrt{T}}$$

Where:

Q_s = flow,

K_v = calibration coefficient,

P = absolute pressure,

T = absolute temperature.

The calibration procedure described in paragraph (d)(3) of this section establishes the value of the calibration coefficient at measured values of pressure, temperature and air flow.

(2) The manufacturer's recommended procedure shall be followed for calibrating electronic portions of the CFV.

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Sym	Units	Tolerances
Barometric Pressure (corrected)	P_B	in. Hg (kPa)	±.10 in. Hg (±.34 kPa).
Air temperature, into flowmeter	ETI	°F (°C)	±.5°F (±.28°C).
Pressure drop between the inlet and throat of metering venturi.	EDP	in. H_2O (kPa)	±.05 in. H_2O (±.012 kPa).
Air flow	Q_s	ft³/min. (m³/min.)	±.5% of NBS "true" value.
CFV inlet depression	PPI	in. fluid (kPa)	±.13 in. fluid (±.055 kPa).
Temperature at venturi inlet	T_v	°F (°C)	±4.0°F (±2.22°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

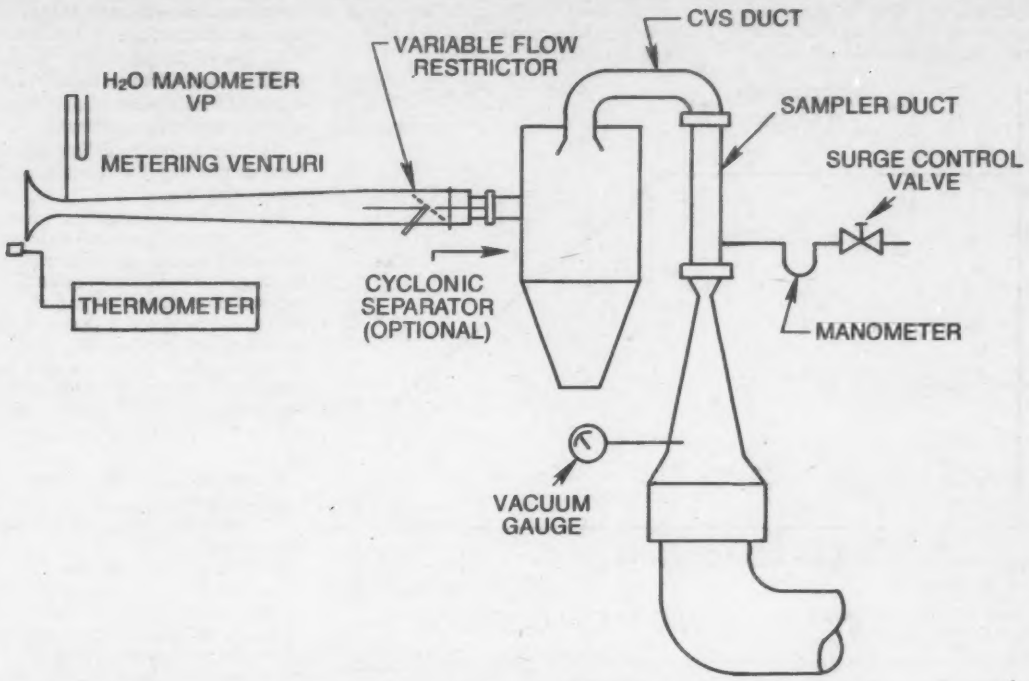


FIGURE N84-7 — CFV-CVS CALIBRATION CONFIGURATION

(4) Set up equipment as shown in Figure N84–7 and eliminate leaks. (Leaks between the flow measuring devices and the critical flow venturi will seriously affect the accuracy of the calibration.)

(5) Set the variable flow restrictor to the open position, start the blower, and allow the system to stabilize. Record data from all instruments.

(6) Vary the flow restrictor and make at least eight readings across the critical flow range of the venturi.

(7) *Data analysis.* The data recorded during the calibration are to be used in the following calculations:

(i) The air flow rate, Qs, at each test point is calculated in standard cubic feet per minute from the flow meter data using the manufacturer's prescribed method.

(ii) Calculate values of the calibration coefficient for each test point:

$$K_v = \frac{Q_s \sqrt{T_v}}{P_v}$$

Where:

Q_s = Flow rate in standard cubic feet per minute, at the standard conditions of 68°F, 29.92 inches Hg (20°C, 101.3 kPa);

T_v = Temperature at venturi inlet, °R(°K);

P_v = Pressure at venturi inlet, in Hg (kPa);

= P_B - PPI (Sp. Gr./13.5955), and

= P_B - PPI for SI units.

Where:

PPI = Venturi inlet pressure depression, inches fluid (kPa).

Sp. Gr. = Specific gravity of manometer fluid.

(iii) Plot K_v as a function of venturi inlet pressure. For choked flow, K_v will have a relatively constant value. As pressure decreases (vacuum increases), the venturi becomes unchoked and K_v decreases. (See Figure N84–8.)

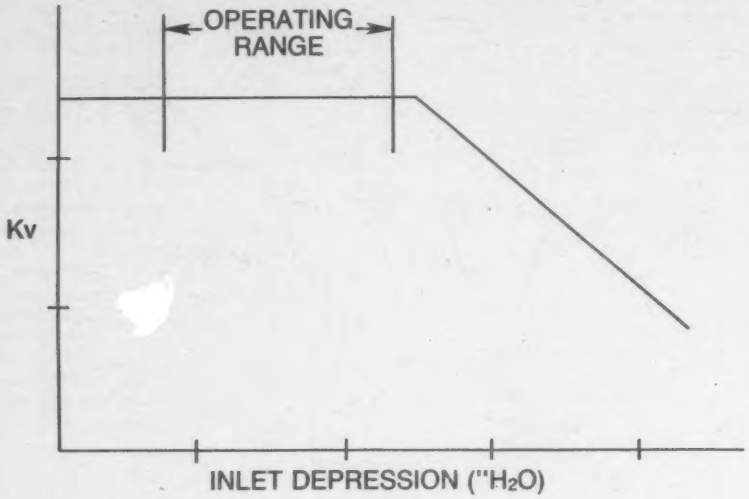


FIGURE N84-8— SONIC FLOW CHOKING

(iv) For a minimum of 8 points in the critical region calculate an average K_v and the standard deviation.

(v) If the standard deviation exceeds 0.3 percent of the average K_v, take corrective action.

(e) *CVS system verification.* The following "gravimetric" technique can be used to verify that the CVS and analytical instruments can accurately measure a mass of gas that has been injected into the system. (Verification can also be accomplished by constant flow metering using critical flow orifice devices.)

(1) Obtain a small cylinder that has been charged with pure propane.

(2) Determine a reference cylinder weight to the nearest 0.01 grams.

(3) Operate the CVS in the normal manner and release a quantity of pure propane into the system during the sampling period (approximately 5 minutes).

(4) The calculations of § 86.1342 are performed in the normal way except in the case of propane. The density of propane (17.30 g/ft³/carbon atom (0.6109 kg/m³/carbon atom)) is used in place of the density of exhaust hydrocarbons.

(5) The gravimetric mass is subtracted from the CVS measured mass and then divided by the gravimetric mass to determine the percent accuracy of the system.

(6) Good engineering practice requires that the cause for any discrepancy greater than ± 2 percent must be found and corrected.

§ 86.1320–84 [Reserved]

§ 86.1321–84 Hydrocarbon analyzer calibration.

The FID hydrocarbon analyzer shall receive the following initial and periodic calibration. The HFID shall be operated to a set point ±10°F (±5.5°C) between 365 and 385°F (185 and 197°C).

(a) *Initial and periodic optimization of detector response.* Prior to introduction into service and at least annually thereafter, the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

(1) Follow good engineering practices for initial instrument start-up and basic operating adjustment using the appropriate fuel (see § 86.1314–84) and zero-grade air.

(2) Optimize on the most common operating range. Introduce into the analyzer a propane-in-air mixture with a propane concentration equal to approximately 90 percent of the most common operating range.

(3) One of the following procedures is required for FID or HFID optimization.

(i) The procedures outlined in Society of Automotive Engineers (SAE) paper No. 770141, "Optimization of Flame Ionization Detector for Determination of Hydrocarbons in Diluted Automobile Exhaust"; author, Glenn D. Reschke.

(ii) The HFID optimization procedures outlined in 40 CFR Part 86, Subpart D.

(iii) Alternate procedures approved in advance by the Administrator.

(4) After the optimum flow rates have been determined, they are recorded for future reference.

(b) *Initial and periodic calibration.* Prior to introduction into service and monthly thereafter, the FID or HFID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate and pressures as when analyzing samples. Calibration gases shall be introduced directly at the analyzer, unless the "overflow" calibration option of § 86.1310–84(b)(3)(i) for the HFID is taken.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each used operating range with propane-in-air calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

§ 86.1322–84 Carbon monoxide analyzer calibration.

The NDIR carbon monoxide analyzer shall receive the following initial and periodic calibration.

(a) *Initial and periodic interference check.* Prior to its introduction into service and annually thereafter, the NDIR carbon monoxide analyzer shall be checked for response to water vapor and CO_2:

(1) Follow good engineering practices for instrument start-up and operation. Adjust the analyzer to optimize performance on the most sensitive range to be used.

(2) Zero the carbon monoxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Bubble a mixture of 3 percent CO_2 in N_2 through water at room temperature and record analyzer response.

(4) An analyzer response of more than 1 percent of full scale for ranges above 300 ppm full scale or more than 3 ppm on ranges below 300 ppm full scale

requires corrective action. (Use of conditioning columns is one form of corrective action which may be taken.)

(b) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter, the NDIR carbon monoxide analyzer shall be calibrated.

(1) Adjust the analyzer to optimize performance.

(2) Zero the carbon monoxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Calibrate on each used operating range with carbon monoxide-in-N_2 calibration gases having nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit not-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

(c) The initial and periodic interference, system check, and calibration test procedures specified in 40 CFR Part 86, Subpart D may be used in lieu of the procedures specified in this section.

§ 86.1323–84 Oxides of nitrogen analyzer calibration.

The chemiluminescent oxides of nitrogen analyzer shall receive the following initial and periodic calibration.

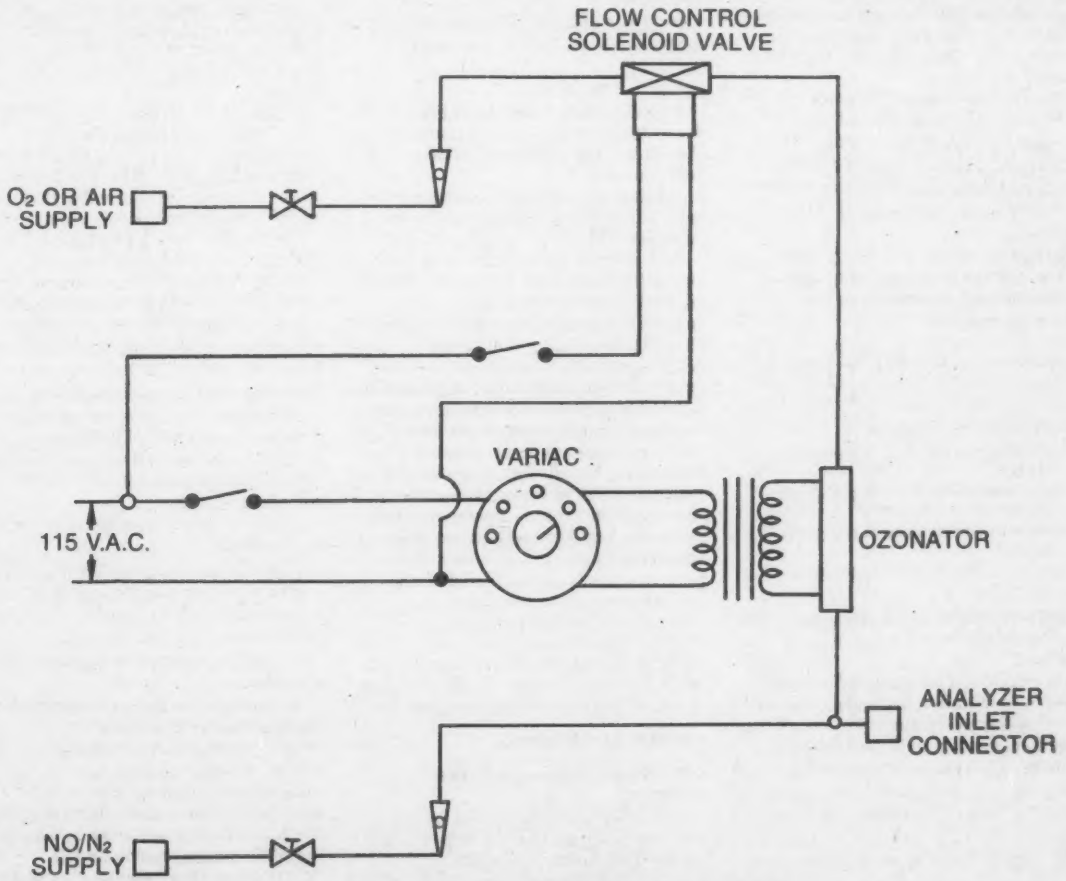
(a) Prior to its introduction into service and weekly thereafter, the chemiluminescent oxides of nitrogen analyzer shall be checked for NO_2 to NO converter efficiency. Figure N84–9 is a reference for the following paragraphs:

(1) Follow good engineering practices for instrument start-up and operation. Adjust the analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Connect the outlet of the NO_x generator to the sample inlet of the oxides of nitrogen analyzer which has been set to the most common operating range.

(4) Introduce into the NO_x generator analyzer-system and NO-in-nitrogen (N_2) mixture with a NO concentration equal to approximately 80 percent of the most common operating range. The NO_2 content of the gas mixture shall be less than 5 percent of the NO concentration.



(SEE FIG. N84-5 FOR SYMBOL LEGEND)

FIGURE N84-9 — NO_x CONVERTER EFFICIENCY DETECTOR

(5) With the oxides of nitrogen analyzer in the NO mode, record the concentration of NO indicated by the analyzer.

(6) Turn on the NO_x generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in paragraph (a)(5) of this section. Record the concentration of NO in this $NO+O_2$ mixture.

(7) Switch the NO_x generator to the generation mode and adjust the generation rate so that the NO measured on the analyzer is 20 percent of that measured in paragraph (a)(5) of this section. There must be at least 10 percent unreacted NO at this point. Record the concentration of residual NO.

(8) Switch the oxides of nitrogen analyzer to the NO_x mode and measure total NO_x. Record this value.

(9) Switch off the NO_x generator but maintain gas flow through the system. The oxides of nitrogen analyzer will indicate the NO_x in the $NO+O_2$ mixture. Record this value.

(10) Turn off the NO_x generator O_2 (or air) supply. The analyzer will now indicate the NO_x in the original NO-in-N_2 mixture. This value should be no more than 5 percent above the value indicated in paragraph (a)(4) of this section.

(11) Calculate the efficiency of the NO_x converter by substituting the concentrations obtained into the following equation:

$$\text{Percent efficiency} = \left(1+\frac{a-b}{c-d}\right)x100$$

Where:

a = concentration obtained in paragraph (a)(8),
b = concentration obtained in paragraph (a)(9),
c = concentration obtained in paragraph (a)(6),
d = concentration obtained in paragraph (a)(7).

If converter efficiency is not greater than 90 percent corrective action will be required.

(b) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter, the chemiluminescent oxides of nitrogen analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples. Proceed as follows:

(1) Adjust analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with NO-in-N_2 calibration gases with nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

(c) The initial and periodic interference, system check, and calibration test procedures specified in 40 CFR Part 86, Subpart D, may be used in lieu of the procedures specified in this section.

§ 86.1324–84 Carbon dioxide analyzer calibration.

Prior to its introduction into service and monthly thereafter, the NDIR carbon dioxide analyzer shall be calibrated as follows:

(a) Follow good engineering practices for instrument start-up and operation. Adjust the analyzer to optimize performance.

(b) Zero the carbon dioxide analyzer with either zero-grade air or zero-grade nitrogen.

(c) Calibrate on each normally used operating range with carbon dioxide-in-N_2 calibration or span gases having nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviaton from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

(d) The initial and periodic interference, system check, and calibration test procedures specified in 40 CFR Part 86, Subpart D, may be used in lieu of the procedures in this section.

§ 86.1325–84 [Reserved]

§ 86.1326–84 Calibration of other equipment.

Other test equipment used for testing shall be calibrated as often as required by good engineering practice.

§ 86.1327–84 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen. The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in § 86.1334–84 and § 86.1335–84, respectively. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of Subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during the cold and hot start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x). A bag sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen.

(b) Engine torque and rpm shall be recorded continuously during both the cold and hot start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals the brake horsepower is integrated with respect to time for the cold and hot cycles. This produces a brake horsepower-hour value that enables the brake-specific emissions to be determined (see § 86.1342–84, Calculations; exhaust emissions).

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) Evaporative emission controls need not be connected if data are provided to show that normal operating conditions are maintained in the engine induction system.

(3) On air cooled engines, the fan shall be installed.

(4) Additional accessories (e.g., oil cooler, alternators, air compressors, etc.) may be installed if typical of the in-use application.

(5) The engine may be equipped with a production type starter.

(e) Means of engine cooling which will maintain the engine operating temperatures (e.g., temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Only water is allowed as an engine coolant medium. Rust inhibitors and lubrication additives may be used, up to the levels

recommended by the additive manufacturer. Antifreeze mixtures (e.g., ethylene glycol, alcohols, etc.) and other coolants that would enhance heat transfer are specifically prohibited.

(f) *Exhaust system.* The exhaust system shall meet the following requirements:

(1) *Gasoline-fueled engines.* A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) *Diesel-fueled engines.* A facility-type exhaust system shall be used, and shall meet the following requirements:

(i) Exhaust system length from the exit of the engine exhaust manifold or turbocharger outlet to the dilution tunnel is required to be not more than 32 feet. Exhaust system tubing must be composed of either stainless steel or the type of steel found in-use. This tubing shall have a maximum inside diameter of 6.0 inches (15.2 cm). If the exhaust system exceeds 20 feet in length and if particulate measurements are to be made, it is recommended that all solid tubing be insulated. If particulate measurements are to be made, it is also recommended that all solid tubing be smooth.

(ii) Short section (altogether not to exceed 20 percent of the entire exhaust system length) of flexible tubing at connection points are allowed.

(iii) If the tubing is insulated, the radial thickness of the insulation is recommended to be at least R inches, where:

$$R = 16(k) - 2(r),$$

Where:

k = Thermal conductivity of the insulating material (BTU/hr-ft-°F), and

r = Outer radius of uninsulated tubing (inches).

(iv) The exhaust back pressure or restriction may be set with a valve (and muffler omitted) and restrictions shall be typical of those seen in the actual average vehicle exhaust system configuration.

§ 86.1328-84 [Reserved]

§ 86.1329-84 [Reserved]

§ 86.1330-84 Test sequence, general requirements.

(a) The test sequence shown in Figure N84-10 shows the major steps of the test procedure.

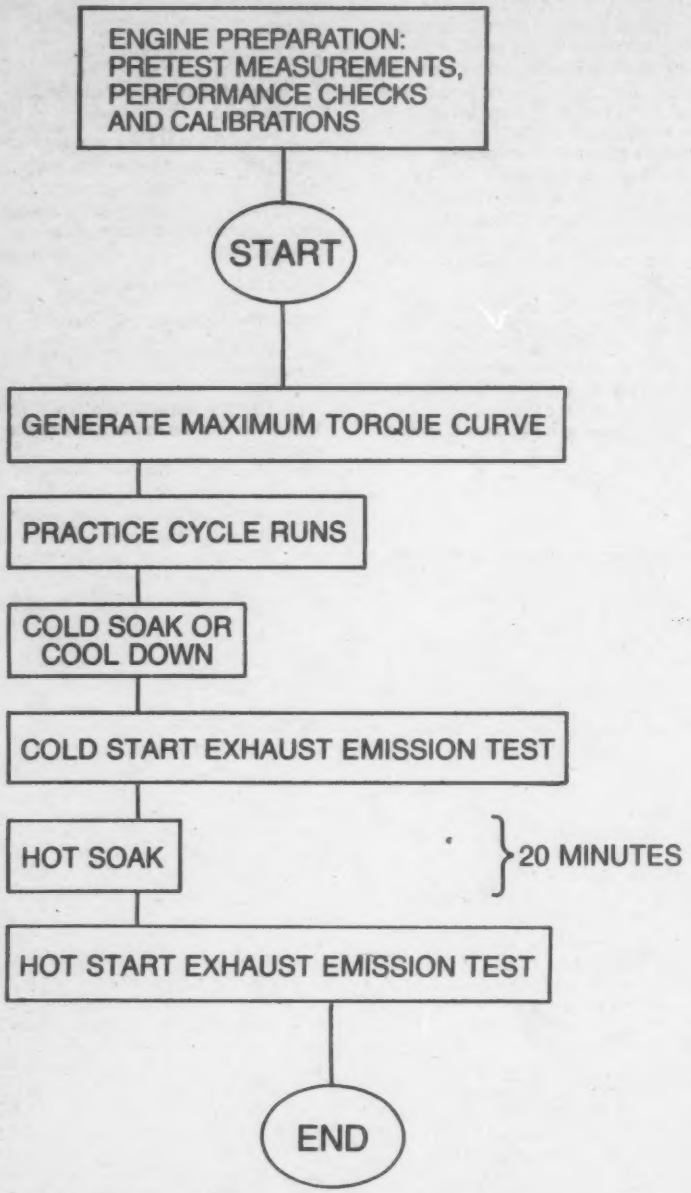


FIGURE N84-10— TEST SEQUENCE

(b) *Control of Air Temperature.*

(1) The temperature of the CVS dilution air shall be maintained at greater than 20°C (68°F) throughout the test sequence.

(2) For engines with auxiliary emission control devices which are temperature dependent (e.g., chokes, air cleaner hot air doors) the test cell ambient air temperature and the temperature of the engine intake air shall be maintained at 25°C ±5°C (77°F ±9°F) throughout the test sequence.

(3) For engines which are not equipped with temperature dependent auxiliary emission control devices, the test cell ambient air temperature and the temperature of the engine intake air shall be greater than 20°C (68°F). No corrections will be made in test results or measured engine power if 30°C (86°F) is exceeded.

(4) The only exceptions to these temperatures are as noted in § 86.1335–84.

(c) No control of ambient air, engine intake air or CVS dilution air humidity is required.

(d) The idle test of Subpart P may be run after completion of the hot start exhaust emission test, if applicable.

(e) The barometric pressure observed during the generation of the maximum torque curve shall not deviate more than 1 inch Hg from the value measured at the beginning of the map. The average barometric pressure observed during the exhaust emission test must be within 1 inch Hg of the average observed during the maximum torque curve generation.

(f) *Diesel-Fueled Engines only.* Air inlet and exhaust restrictions shall be set to represent the average restrictions which would be seen in use in a representative application. Inlet depression and exhaust backpressure shall be set with the engine operating at rated speed and wide open throttle, except for the case of inlet depression for naturally aspirated engines, which shall be set at maximum engine speed (high idle). The settings shall take place during the final mode of the preconditioning prior to determining the maximum torque curve.

(g) Pre-test engine measurements (e.g., governed diesel-fueled engine high idle speed, diesel-fueled engine fuel flows, etc.), pre-test engine performance checks (e.g., verification of actual rated rpm, etc.) and pre-test system calibrations (e.g., inlet and exhaust restrictions, etc.) shall be made prior to generation of the maximum torque curve. This can be done during engine preconditioning, or at the manufacturer's convenience subject to the requirements of good engineering practice.

§ 86.1331–84 [Reserved]

§ 86.1332–84 Engine mapping procedures.

(a) Mount test engine on the engine dynamometer.

(b) Determine minimum mapping speed. The minimum speed is defined as the warm engine curb idle rpm.

(c) Determine maximum mapping speed per the following methodologies. (Note paragraph (d)(1) of this section.)

(1) *Gasoline-fueled engines.* (i) For ungoverned engines the maximum mapping speed shall be calculated from the following equation:

$$\text{Maximum speed} = \text{curb idle rpm} + \frac{115\ (\text{Measured rated rpm} - \text{curb idle rpm})}{100}$$

(ii) For governed engines the maximum mapped speed shall be either that speed at which the wide-open throttle torque drops off to zero, or the maximum speed as calculated for ungoverned engines, whichever is smaller.

(2) *Diesel-fueled engines.* (i) For ungoverned engines the maximum mapping speed shall be calculated from the following equation:

$$\text{Maximum speed} = \text{curb idle rpm} + \frac{113\ (\text{measured rated rpm} - \text{curb idle rpm})}{100}$$

(ii) For governed engines the maximum mapping speed shall be either that speed at which wide-open throttle torque drops off to zero, or the maximum speed as calculated for ungoverned engines, whichever is smaller.

(d) Perform an engine power map.

(1) During engine preparation or warm-up, the engine may be operated such that a preliminary estimate of measured rated rpm can be made.

(2) *Gasoline-fueled engines.* (i) For a cold engine, start the engine and operate at zero load in accordance with the manufacturer's start-up and warm-up procedures for 1 minute ±30 seconds.

(ii) Operate the engine at a torque equivalent to 10 ±3 percent of the most recent determination of maximum torque for 4 minutes ±30 seconds at 2,000 rpm.

(iii) Operate the engine at a torque equivalent to 55 ±5 percent of the most recent determination of maximum torque for 35 minutes ±1 minute at 2,000 rpm.

(iv) Operate the engine at idle (minimum speed).

(v) Open the throttle fully.

(vi) While maintaining wide-open throttle and full-load, maintain minimum engine speed for at least 15 seconds. Record the average torque during the last 5 seconds.

(vii) In no greater than 100 ±20 rpm increments, determine the maximum torque curve from minimum speed to maximum speed. Hold each test point for 15 seconds and record the average torque over the last 5 seconds.

(viii) *Alternate mapping technique.* In place of paragraph (d)(2) (vi) and (vii) of this section a continual sweep of rpm is allowed. While operating at wide-open throttle, the engine speed is increased at an average rate of 8 rpm/second (±1 rpm/second) from minimum speed to maximum speed. Speed and torque points shall be recorded at a sample rate of at least one point per second.

(ix) Recalculate the maximum speed per paragraph (c)(1) (i) or (ii) of this section using the measured rated speed derived from the new maximum torque curve. If the new maximum speed lies outside the range of speeds encompassed by the actual map, then the map shall be considered void, and another map will need to be run using the newly derived measured rated speed in all calculations.

(x) For warm engines, the entire warm-up procedure specified in paragraphs (d)(2) (i) through (iii) of this section need not be repeated. It is sufficient for an engine already at normal operating temperatures to be operated at the conditions specified in paragraph (d)(2)(iii) of this section until oil and water temperatures are stabilized, after which the procedures of paragraphs (d)(2) (iv) through (vii) of this section may be performed. The oil and water temperatures are defined as stabilized if they are maintained within 2 percent of point for 2 minutes.

(3) *Diesel-fueled engines.* (i) If the engine is cold, start and operate at free idle for 2 to 3 minutes.

(ii) Operate the engine at approximately 50 percent power at the peak torque speed for 5 to 7 minutes.

(iii) Operate the engine at rated speed and wide open throttle for 25 to 30 minutes.

(iv) *Option.* The engine may be preconditioned by operating at rated speed and maximum horsepower until the oil and water temperatures are stabilized. The temperatures are defined as stabilized if they are maintained within 2 percent of point for 2 minutes. This optional procedure may be substituted for paragraph (d)(3)(iii) of this section.

(v) Unload the engine and operate at the curb idle speed.

(vi) Operate the engine at wide open throttle and minimum engine speed. Increase the engine speed at an average rate of 8 rpm/second (±1 rpm/second) from minimum to maximum speed. Engine speed and torque points shall be recorded at a sample rate of at least one point per second.

(vii) Recalculate the maximum speed per paragraph (c)(2) (i) or (ii) of this section using the measured rated speed derived from the new maximum torque curve. If the new maximum speed lies outside the range of speeds encompassed by the actual map, then the map shall be considered void. The entire mapping procedure shall be repeated, using the newly derived measured rated speed in all calculations.

(viii) For warm engines, the entire warm-up procedure specified in paragraphs (d)(3) (i) through (iv) of this section need not be repeated. It is sufficient for an engine already at normal operating temperatures to be operated per the requirements of paragraph (d)(3)(iv) of this section, after which the procedures of paragraphs (d)(3) (v) and (vi) of this section may be performed.

(e) Mapping curve generation.

(1) *Gasoline-fueled engines.* (i) Fit all data points recorded under paragraphs (d)(2) (vi) and (vii) of this section (100 rpm increments) with a cubic spline technique. The cubic spline curve shall be accurate to within ±1.0 ft-lbs. of all recorded engine torques.

(ii) All points generated under the continuous rpm sweep by paragraphs (d)(2) (vi) and (viii) of this section shall be connected by linear interpolation between points.

(iii) For governed engines, all points above the maximum speed (see paragraph (c)(1)(ii) of this section) shall be assigned maximum torque values of zero for purposes of cycle generation.

(iv) For all engines, all speed points below the minimum speed shall be assigned a maximum torque value equal to that observed at minimum speed for purposes of cycle generation.

(v) The torque curve resulting from paragraphs (e)(1) (i) through (iv) of this section is the mapping curve and will be used to convert the normalized torque values in the engine cycle (see Appendix I(f)(1) to this part) to actual torque values for the test cycle.

(2) *Diesel-fueled engines.*

(i) Connect all data points recorded under paragraph (d)(3(vi) of this section using linear interpolation between points.

(ii) For governed engines, all points above the maximum speed (see paragraph (c)(2)(ii) of this section) shall be assigned maximum torque values of zero for purposes of cycle generation.

(iii) For all engines, all speed points below the minimum speed shall be assigned a maximum torque value equal to that observed at the minimum speed for purposes of cycle generation.

(iv) The torque curve resulting from paragraphs (e)(2)(i) through (e)(2)(iii) of this section is the mapping curve and will be used to convert the normalized torque values in the engine cycle (see Appendix I(f)(2) to this part) into actual torque value for the test cycle.

(f) *Alternate mapping.* If a manufacturer believes that the above mapping techniques are unsafe or unrepresentative for any given engine or engine family, alternate mapping techniques may be used. These alternate techniques must satisfy the intent of the specified mapping procedures to determine the maximum available torque at all engine speeds achieved during the test cycles. Deviations from the mapping techniques specified in this section for reasons of safety or representativeness shall be reported per § 86.1344–84(e)(6), along with the justification for their use. In no case, however, shall descending continual sweeps of rpm be used for governed or turbocharged engines.

(g) *Replicate Tests.* An engine need not be mapped before each and every cold cycle test. An engine shall be remapped prior to a cold cycle test if:

(1) An unreasonable amount of time has transpired since the last map, as determined by engineering judgement, or

(2) The barometric pressure prior to the start of the cold cycle test has changed more than 1 inch Hg from the average barometric pressure observed during the map, or

(3) Physical changes or recalibrations have been made to the engine which may potentially affect engine performance.

§ 86.1333–84 Transient test cycle generation.

(a) The heavy-duty transient engine cycles for gasoline- and diesel-fueled engines are listed in Appendix I ((f) (1) and (2) to this part). These second-by-second listings represent torque and rpm maneuvers characteristic of heavy-duty engines. Both rpm and torque are normalized (expressed as a percentage of maximum) in these listings.

(1) To unnormalize rpm use the following equation:

$$\text{Actual rpm} = \frac{\%\ \text{rpm (Measured rated rpm} - \text{curb idle rpm)}}{100} + \text{Curb idle rpm}$$

The method of calculating measured rated rpm is detailed in paragraph (g) of this section.

(2) Torque is normalized to the maximum torque at the rpm listed with it. Therefore, to unnormalize the torque values in the cycle, the maximum torque curve for the engine in question must be used. The generation of the maximum torque curve is described in § 86.1332–84.

(b) *Example of the unnormalization procedure.* The following test point shall be unnormalized:

% RPM	% Torque
43	82

Given the following values:
Measured Rated rpm=3800
Curb Idle rpm=600
Calculate actual rpm:

$$\text{Actual rpm} = \frac{\%\ \text{rpm (Measured rated rpm} - \text{curb idle rpm)}}{100} + \text{Curb idle rpm}$$

$$\text{Actual rpm} = \frac{43\ (3800-600)}{100} + 600$$

Actual rpm=1976

Determine actual torque: Determine the maximum observed torque at 1976 rpm from the maximum torque curve. Then multiply this value (e.g., 358 ft-lbs.) by 0.82. This results in an actual torque of 284 ft-lbs.

(c) Engine speed and torque shall be recorded at least once every second during the cold start test and hot start test. The torque and rpm feedback signals may be electronically filtered.

(d) *Automatic chokes.* The zero percent speed specified in the gasoline-fueled engine cycle (Appendix I(f)(1) to this part) shall be superseded by proper operation of the engine's automatic choke.

(1) During automatic choke operation a manual transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of 0 ft-lbs. ±10 ft-lbs. (using, for example, clutch disengagement, speed to torque control switching, software overrides, etc.) at those points in Appendix I(f)(1) to this part where both reference speed and reference torque are zero percent values.

(2) During automatic choke operation an automatic transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of CITT ft-lbs. ±10 ft-lbs. (see (e)(2) of this section for definition of CITT) at those points in Appendix I(f)(1) to this part where both reference speed and reference torque are zero percent values.

(3) For engines tested without an operating clutch, modification to the cycle validation criteria for this automatic choke high idle allowance is permitted only for the first 150 seconds of the cold cycle and the first 30 seconds of the hot cycle. After this, the cycles shall be run as specified in Appendix I (f)(1) to this part. (See § 86.1341–84 for allowances in the cycle validation criteria.)

(e) *Automatic Transmissions.* The reference cycles in Appendix I(f) (1) and (2) to this part shall be altered for test engines intended primarily for use with automatic transmissions.

(1) Zero percent speed for automatic transmission engines is defined as curb idle rpm (i.e., in-vehicle, coupled with automatic transmission in gear).

(2) All zero-percent speed, zero-percent torque points (idle points) shall be modified to zero percent speed, *x* percent torque except as permitted in § 86.1337–84(a)(8). Using the manufacturers' specified curb idle transmission torque (CITT), the maximum torque available at the curb idle (i.e., with transmission) rpm as determined from the maximum torque curve generated in § 86.1332–84, *X* percent torque is defined per the following equation:

$$x\ \% = \frac{\text{CITT} \times 100}{\text{Maximum torque at curb idle rpm}}$$

The manufacturer's specified CITT shall be based upon those observed in typical applications.

(f) *Clutch operation.* Manual transmission engines may be tested with a clutch. If used, the clutch shall be disengaged at all zero percent speeds, zero percent torque points, but may be engaged up to two points preceding a non-zero point, and may be engaged for time segments with zero percent speed and torque points of durations less than four seconds. (See § 86.1341–84 for allowances in the cycle validation criteria.)

(g) *Measured rated rpm.* The measured rated rpm corresponds to the 100 percent rpm values specified in the reference cycles of Appendix I(f) (1) and (2) to this part. It is generally intended to represent the rpm at which maximum brake horsepower occurs. For the purposes of this test sequence, it shall either be defined as the manufacturer's specified rated speed, or calculated in the following way, whichever yields the higher speed:

(1) From the maximum torque curve generated per § 86.1332–84, find the maximum observed brake horsepower of the engine.

(2) Calculate 98 percent of the observed maximum brake horsepower, and determine from the maximum torque curve the highest and lowest engine rpms at which this brake horsepower is observed.

(3) The highest and lowest of the 98 percent power rpms represent the endpoints of an rpm range. The midpoint of this range shall be considered the measured rated rpm for cycle generation purposes.

§ 86.1334–84 Pre-test engine and dynamometer preparation.

(a) *Control system calibration.*

(1) Before the cold soak or cool down, final calibration of the dynamometer and throttle control systems may be performed. These calibrations may consist of steady-state operations and/or actual practice cycle runs.

(2) Following any practice runs or calibration procedures, the engine shall be turned off and allowed to either cold soak at 68° to 86°F until the oil temperature reaches 24°C, or until 12 hours have elapsed, whichever time is shorter, or be cooled per §86.1335–84.

§ 86.1335–84 Optional forced cool-down procedure.

(a) This forced cool-down procedure applies to both gasoline and diesel-fueled engines.

(b) No substances or fluids may be applied to the engine's internal or external surfaces except for water and air as prescribed in paragraphs (c) and (d) of this section.

(c) For water-cooled engines two types of cooling are permitted.

(1) Water may be circulated through the engine's water coolant system.

(i) The cooling water may be flowed in either direction and at any desired flow rate. The thermostat may be removed or blocked open during the cool-down but must be restored before the exhaust emissions test begins.

(ii) The temperature of the circulated or injected water shall be at least 10°C (50°F). In addition, the temperature of the cooling water shall not exceed 30°C (86°F) during the last 30 minutes of the forced cool-down.

(iii) Only water, including the use of a building's standard water supply, or the coolant that is already in the engine (per § 86.1327–84(e)) is permitted for forced cool-down purposes.

(2) Flows of air may be directed at the exterior of the engine.

(i) Air shall be directed uniformly over the entire exterior surface of the engine at any desired flow rate.

(ii) The temperature of the cooling air shall not exceed 30°C (86°F) during the last 30 minutes of the cool down, but may be less than 20°C (66°F) at any time.

(d) For air-cooled engines only cooling as prescribed in paragraph (c)(2) of this section is permitted.

(e) The cold cycle exhaust emission test may begin after a forced cool down only when the engine oil temperature is stabilized between 20°C and 24°C (68°F and 75°F). This temperature measurement is to be made by a temperature measurement device immersed in the sump oil, the sensor part of which is not in contact with any engine surface. No engine oil change is permitted during the test sequence. Direct forced cooling of engine oil through the use of oil coolers, heat exchangers, etc., is permitted only with engines of displacements greater than 500 cubic inches; forced cooling of engine oil for all other engines can only be accomplished by natural conduction and convection associated with the procedures in paragraphs (c) and (d) of this section. In addition, the cold cycle emission test for engines subjected to direct forced cooling of engine oil may only begin when the circulating water temperature has stabilized to within ±2.8°C (5°F) of the stabilized oil temperature.

(f)(1) The cold cycle exhaust emission test for gasoline engines equipped with catalytic converters may begin after a forced cool down only when the catalyst bed temperature at the catalyst outlet is 25°C ±5°C (77°F ±9°F), in addition to the temperature restrictions in paragraph (e) of this section.

(2) Catalyst cool down may be accomplished in whatever manner and using whatever coolant deemed appropriate by proper engineering judgment. The catalyst, engine, and exhaust piping configurations shall not be separated, altered, or moved in any way during the cool down.

(g) At the completion of the forced cool down, all general requirements specified in § 86.1330–84, the oil temperature specification set forth in paragraph (e) of this section, and the catalyst temperature specifications in paragraph (f) of this section must be met before the cold cycle exhaust emission test may begin.

§ 86.1336–84 Engine starting and restarting.

(a) The engine shall be started according to the manufacturer's recommended starting procedure in the owner's manual, using either a production starter motor or the dynamometer. The speed at which the engine is cranked (motored) with the dynamometer shall be equal to the cranking speed (nominal speed ±10 percent) in the vehicle with a fully charged battery. The time taken to accelerate the engine to cranking speed by the dynamometer shall be equal (nominal ±0.5 seconds) to the time required with a starter motor. Motoring by the dynamometer shall be terminated not more than one second after the engine starts. The 24 ±1-second free idle period, and declutching if

applicable, shall begin when the engine is determined to have started.

(1) Engines equipped with automatic chokes shall be operated according to the manufacturer's operating instructions in the owner's manual, including choke setting and "kick-down" from cold fast idle.

(2) Engines equipped with manual chokes shall be operated according to the manufacturer's operating instructions in the owner's manual.

(3) The operator may use the choke, throttle, etc. where necessary to keep the engine running.

(4) If the manufacturer's operating instructions in the owner's manual do not specify a warm engine starting procedure, the engine (automatic and manual choke engines) shall be started by depressing the throttle half way and cranking the engine until it starts.

(b)(1) If the engine does not start after 15 seconds of cranking, cranking shall cease and the reason for failure to start shall be determined. The gas flow measuring device (or revolution counter) on the constant volume sampler (and the hydrocarbon integrator when testing diesel-fueled engines) shall be turned off during this diagnostic period. In addition, either the CVS should be turned off or the exhaust tube disconnected from the tailpipe during the diagnostic period. If failure to start is an operational error, the engine shall be rescheduled for testing from a cold start.

(2) If longer cranking times are necessary and recommended to the ultimate purchaser, such cranking times may be used in lieu of the 15-second limit, provided the owner's manual and the service repair manual indicate that the longer cranking times are normal.

(3) If a failure to start occurs during the cold portion of the test and is caused by an engine malfunction, corrective action of less than 30 minutes duration may be taken (according to § 86.084–25), and the test continued. The sampling system shall be reactivated at the same time cranking begins. When the engine starts, the timing sequence shall begin. If failure to start is caused by engine malfunction and the engine cannot be started, the test shall be voided and corrective action may be taken according to § 86.084–25.

(4) If a failure to start occurs during the hot start portion of the test and is caused by engine malfunction, the engine must be started within one minute of key on. The sampling system shall be reactivated at the same time cranking begins. When the engine starts, the transient engine cycle timing sequence shall begin. If the engine cannot be started within one minute of key on, the test shall be voided, corrective action taken (according to § 86.084–25), and the engine rescheduled for testing.

(c) *Engine stalling.* (1) If the engine stalls during the initial idle period of either the cold or hot start test, the engine shall be restarted immediately using the appropriate cold or hot starting procedure and the test continued.

(2) If the engine stalls anywhere in the cold cycle, except in the initial idle period, the test shall be voided.

(3) If the engine stalls on the hot cycle portion of the test at any time other than the initial idle, the engine may be shut off and resoaked for 20 minutes. The hot cycle may then be rerun. Only one hot start resoak and restart is permitted.

§ 86.1337–84 Engine dynamometer test run.

(a) The following steps shall be taken for each test:

(1) Prepare the engine, dynamometer, and sampling system for the cold start test. Change filters, etc. and leak check as necessary.

(2) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(3) Attach the CVS to the engine exhaust system anytime prior to starting the CVS.

(4) Start the CVS (if not already on), the sample pumps, the engine cooling fan(s) and the data collection system. The heat exchanger of the constant volume sampler (if used) and the heated components of any continuous sampling systems(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. (See § 86.1340–84(e) for continuous sampling procedures.)

(5) Adjust the sample flow rates to the desired flow rates and set the CVS gas flow measuring devices to zero.

Note.—CFV–CVS sample flow rate is fixed by the venturi design.

(6) Follow the manufacturer's choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon, continuous NOx, CO, or CO_2 (if used) analyzer(s) system integrator(s) and indicate the start of the test on the data collection medium (i.e., mark the chart on a chart recorder, set a byte on a computer or data logger, etc.).

(7) As soon as it is determined that the engine is started, start a "free idle" timer.

(8) Allow the engine to idle freely with no-load for 24±1 seconds. This idle period for automatic transmission engines may be interpreted as an idle speed in neutral or park. All other idle conditions shall be interpreted as an idle speed in gear. It is permissible to lug the engine down to curb idle speed during the last 8 seconds of the free idle period for the purpose of engaging dynamometer control loops.

(9) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle time is included in the 25±1 seconds.

(10) On the last record of the cycle cease sampling, immediately turn the engine off, and start a hot soak timer. Sampling systems should continue to sample after the end of the test cycle until system response times have elapsed.

(11) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower or disconnect the exhaust system from the CVS. As soon as possible transfer the "cold start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 83.1340–84. A stablized reading of the exhaust sample on all analyzers shall be made within 20 minutes of the end of the sample collection phase of the test.

(12) Allow the engine to soak for 20±1 minutes.

(13) Prepare the engine and dynamometer for the hot start test.

(14) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(15) Start the CVS (if not already on) or connect the exhaust system to the CVS (if disconnected). Start the sample pumps, the engine cooling fan(s) and the data collection system. The heat exchanger of the constant volume sampler (if used) and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. See § 86.1340–84(e) for continuous sampling procedures.

(16) Adjust the sample flow rates to the desired flow rate and set the CVS gas flow measuring devices to zero.

Note.—CFV–CVS sample flow rate is fixed by the venturi design.

(17) Follow the manufacturer's choke and throttle instruction for hot starting. Simultaneously start the engine and begin exhaust and dilution air sampling.

(18) As soon as it is determined that the engine is started, start a "free idle" timer.

(19) Allow the engine to idle freely with no-load for 24±1 seconds. The provisions and interpretations of paragraph (a)(8) of this section apply.

(20) Begin the transient engine cycle such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle is included in the 25±1 seconds.

(21) Beginning at the last record of the cycle, allow sampling system response times to elapse and cease sampling.

(22) As soon as possible transfer the "hot start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test.

(23) The CVS and the engine may be turned off, if desired.

(b) The procedure in paragraph (a) of this section is designed for one sample bag for the cold start portion and one for the hot start portion. It is also permissible to use more than one sample bag per test portion.

(c) If a dynamometer test run is determined to be void, corrective action may be taken. The engine may then be allowed to cool (naturally or forced) and the dynamometer test rerun per paragraphs (a) or (b) of this section.

§ 86.1338–84 Emission measurement accuracy.

(a) *Measurement accuracy—Bag sampling.* (1) Good engineering practice dictates that analyzer readings below 15 percent of full scale chart deflection should generally not be used.

(2) Some high resolution read-out systems such as computers, data loggers, etc., can provide sufficient accuracy and resolution below 15 percent of full scale. Such systems may be used provided that additional calibrations are made to ensure the accuracy of the calibration curves. The following procedure for calibration below 15 percent of full scale may be used:

(i) If a 16-point gas divider is used, 50 percent of the calibration points shall be below 10 percent of full scale. The gas divider shall conform to the accuracy requirements specified in § 86.1314–84(g).

(ii) If a 7- or 9-point gas divider is used, the gas divider shall conform to the accuracy requirements specified in § 86.1314–84(g), and shall be used according to the following procedure:

(A) Span the full analyzer range using a top range calibration gas meeting the accuracy requirements of § 86.1314–84(f)(2).

(B) Generate a calibration curve according to, and meeting the requirements of, § 86.1321–84 through § 86.1324–84.

(C) Select a calibration gas (a span gas may be used for calibrating the CO_2 analyzer) with a concentration between the two lowest non-zero gas divider increments. This gas must be "named" to an accuracy of ±1.0 percent (±2.0 percent for CO_2 span gas) of NBS gas standards, or other standards approved by the Administrator.

(D) Using the calibration curve fitted to the points generated in paragraphs (a)(2)(ii) (A) and (B) of this section, check the concentration of the gas selected in paragraph (a)(2)(ii)(C) of this section. The concentration derived from the curve shall be within ±2.3 percent (±2.8 percent for CO_2 span gas) of the gas' original named concentration.

(E) Provided the requirments of paragraph (a)(2)(ii)(D) of this section are met, use the gas divider with the gas selected in paragraph (a)(2)(ii)(C) of this section and determine the remainder of the calibration points. Fit a calibration curve per §§ 86.1321–84 through 86.1324–84 for the entire analyzer range.

(b) *Measurement accuracy—Continuous sampling.* (1) Analyzers used for continuous analysis must be operated such that the measured concentration falls between 15 and 100 percent of full scale chart deflection. Exceptions to these limits are:

(i) The analyzer's response may be less than 15 percent or more than 100 percent of full scale if automatic range change circuitry is used and the limits for range changes are between 15 and 100 percent of full scale chart deflection;

(ii) The analyzer's response may be less than 15 percent of full scale if:

(A) Alternative (a)(2) of this section is used to ensure that the accuracy of the calibration curve is maintained below 15 percent; or

(B) The full scale value of the range is 155 ppm (C) or less; or

(C) The emissions from the engine are erratic and the integrated chart deflection value for the cycle is greater than 15 percent of full scale; or

(D) The contribution of all data read below the 15 percent level is less than 10 percent by mass of the final test results.

(iii) During the engine start-up, the HC analyzer is allowed to "spike" off-scale for a maximum of 5 seconds.

§ 86.1339–84 [Reserved]

§ 86.1340–84 Exhaust sample analysis.

(a) The analyzer response may be read by automatic data collection (ADC) equipment such as computers, data loggers, etc. If ADC equipment is used the following is required:

(1) For bag analysis the analyzer response must be stable at greater than 99 percent of the final reading for the dilute exhaust sample bag. A single value representing the average chart deflection over a 10-second stabilized period shall be stored. For the background bag, all readings taken during the 10-second interval must be stable at the final value to within ±1 percent of full scale.

(2) For continuous analysis systems, the ADC system must read at least two analyzer readings per second. A single value representing the average integrated concentration over a cycle shall be stored.

(3) The chart deflections or average integrated concentrations required in paragraphs (a) (1) and (2) of this section may be stored on long-term computer storage devices such as computer tapes, storage discs, punch cards, or they may be printed in a listing for storage. In either case a chart recorder is not required and records from a chart recorder, if they exist, need not be stored.

(4) If the data from ADC equipment is used as permanent records, the ADC equipment and the analyzer values as interpreted by the ADC equipment are subject to the calibration specifications in §§ 86.1316–84 through 86.1326–84, as if the ADC equipment were part of the analyzer.

(b) Data records from any one or a combination of analyzers may be stored as chart recorder records.

(c) Software zero and span.

(i) The use of "software" zero and span is permitted. The process of software zero and span refers to the technique of initially adjusting the analyzer zero and span responses to the calibration curve values, but for subsequent zero and span checks the analyzer response is simply recorded without adjusting the analyzer gain. The observed analyzer response recorded from the subsequent check is mathematically corrected back to the calibration curve values for zero and span. The same mathematical correction is then applied to the analyzer's response to a sample of exhaust gas in order to compute the true sample concentration.

(ii) The maximum amount of software zero and span mathematical correction is ±10 percent of full scale chart deflection.

(iii) Software zero and span may be used to switch between ranges without adjusting the gain of the analyzer.

(iv) The software zero and span technique may not be used to mask analyzer drift. The observed chart deflection before and after a given time period or event shall be used for computing the drift. Software zero and span may be used after the drift has been computed to mathematically adjust

any span drift so that the "after" span check may be transformed into the "before" span check for the next segment.

(d) For bag sample analysis perform the following sequence:

(1) Warm-up and stabilize the analyzers; clean and/or replace filter elements, conditioning columns (if used), etc., as necessary.

(2) Obtain a stable zero reading.

(3) Zero and span the analyzers with zero and span gases. The span gases shall have concentrations between 75 and 100 percent of full-scale chart deflection. The flow rates and system pressures during spanning shall be approximately the same as those encountered during sampling. A sample bag may be used to identify the required analyzer range.

(4) Re-check zero response. If this zero response differs from the zero response recorded in paragraph (d)(3) of this section by more than 1 percent of full scale, then paragraphs (d)(2), (d)(3), and (d)(4) of this section should be repeated.

(5) If a chart recorder is used, identify and record the most recent zero and span response as the pre-analysis values.

(6) If ADC equipment is used, electronically record the most recent zero and span response as the pre-analysis values.

(7) Measure HC (except diesels), CO, CO_2, and NO_x sample and background concentrations in the sample bag(s) with approximately the same flow rates and pressures used in paragraph (d)(3) of this section. (Constituents measured continuously do not require bag analysis.)

(8) A post-analysis zero and span check of each range must be performed and the values recorded. The number of events that may occur between the pre and post checks is not specified. However, the difference between pre-analysis zero and span values (recorded in paragraph (d) (5) or (6)) of this section versus those recorded for the post-analysis check may not exceed the zero drift limit or the span drift limit of 2 percent of full scale chart deflection for any range used, otherwise the test is void.

(e) For continuous sample analysis perform the following sequence:

(1) Warm-up and stabilize the analyzers; clean and/or replace filter elements, conditioning columns (if used) etc., as necessary.

(2) Leak check portions of the sampling system that operate at negative guage pressures when sampling, and allow heated sample lines, filters, pumps, etc., to stabilize at operating temperature.

(3) [Optional] Perform a hang-up check for the HFID sampling system:

(i) Zero the analyzer using zero air introduced at the analyzer port.

(ii) Flow zero air through the overflow sampling system. Check the analyzer response.

(iii) If the overflow zero response exceeds the analyzer zero response by 2 percent or more of the HFID full-scale deflection, hang-up is indicated and corrective action must be taken.

(iv) The complete system hang-up check specified in paragraph (f) of this section is recommended as a periodic check.

(4) Obtain a stable zero reading.

(5) Zero and span each range to be used on each analyzer used prior to the beginning of the cold cycle. The span gases shall have a concentration between 75 and 100 percent of full scale chart deflection. The flow rates and system pressures shall be approximately the same as those encountered during sampling. The HFID analyzer shall be zeroed and spanned through the overflow sampling system.

(6) Re-check zero response. If this zero response differs from the zero response recorded in paragraph (e)(5) of this section by more than 1 percent of full scale, then paragraphs (e)(4), (e)(5), and (e)(6) of this section should be repeated.

(7) If a chart recorder is used, identify and record the most recent zero and span response as the pre-analysis values.

(8) If ADC equipment is used, electronically record the most recent zero and span response as the pre-analysis values.

(9) Measure the emissions (HC required for diesels, NO_x, CO, CO_2 optional) continuously during the cold start cycle. Indicate the start of the test, the range(s) used, and the end of the test on the recording medium (chart paper or ADC equipment). Maintain approximately the same flow rates and system pressures used in paragraph (e)(5) of this section.

(10) Collect background HC, CO, CO_2, and NO_x in a sample bag.

(11) Perform a post-analysis zero and span check for each range used at the conditions specified in paragraph (e)(5) of this section. Record these responses as the post-analysis values.

(12) Neither the zero drift nor the span drift between the pre-analysis and post-analysis checks on any range used may exceed 3 percent for HC or 2 percent for NO_x, CO, and CO_2 of full scale chart deflection, or the test is void. (If the HC drift is greater than 3 percent of full-scale chart deflection, hydrocarbon hang-up is likely.)

(13) Determine HC background levels for the cold start cycle by introducing the background sample into the overflow sample system.

(14) Determine background levels of NO_x, CO, or CO_2 (if necessary) by the bag technique outlined in paragraph (d) of this section.

(15) Repeat paragraphs (e) (4) through (14) of this section for the hot cycle. The post-analysis zero and span check for the cold start (or previous hot start) cycle may be used for the pre-analysis zero and span for the following hot start cycle.

(f) HC hang-up. If HC hang-up is indicated, the following sequence may be performed.

(1) Fill a clean sample bag with background air.

(2) Zero and span the HFID at the analyzer ports.

(3) Analyze the background air sample bag through the analyzer ports.

(4) Analyze the background air through the entire sample probe system.

(5) If the difference between the readings obtained is 2 percent or more of the HFID full scale deflection, clean the sample probe and the sample line.

(6) Reassemble the sample system, heat to specified temperature, and repeat the procedure in paragraphs (f) (1) through (6) of this section.

§ 86.1341–84 Test cycle validation criteria.

(a) To minimize the biasing effect of the time lag between the feedback and reference cycle values, the entire engine speed and torque feedback signal sequence may be advanced or delayed in time with respect to the reference speed and torque sequence. If the feedback signals are shifted, both speed and torque must be shifted the same amount in the same direction.

(b) Calculate the brake horsepower for each pair of engine feedback speed and torque values recorded. Also calculate the reference brake horsepower for each pair of engine speed and torque reference values. Calculations shall be to five significant digits.

(c) Linear regressions of feedback value on reference value shall be performed for speed, torque and brake horsepower. The method of least-squares shall be used, with the best fit equation having the form:

$y = mx + b$

Where:

y = The feedback (actual) value of speed (in rpm), torque (in ft-lbs.), or brake horsepower

m = Slope of the regression line

x = The reference value (speed, torque, or brake horsepower)

b=The y intercept of the regression line

(d) The standard error of estimate (SE) of y on x and the coefficient of correlation (r^2) shall be calculated for each regression line.

(e) For a test to be considered valid, the criteria in Figure N84–11 must be met for both cold and hot cycles individually. Point deletions from the regression analyses are permitted where noted in Figure N84–11.

(f) The integrated brake horsepower-hour for each cycle (cold and hot start) shall be between −15 percent and +5 percent of the integrated brake horsepower-hour for the reference cycle or the test is void. All torque and speed data points must be used to calculate the integrated brake horsepower-hour. For the purposes of this calculation, negative or closed rack torque values (i.e., motoring horsepower) shall be set equal to zero and included.

(g) If a dynamometer test run is determined to be statistically or experimentally void, corrective action shall be taken. The engine shall then be allowed to cool (naturally or forced) and the dynamometer test rerun per § 86.1337–84.

(h) For diesel engines, all reference torque values specified in Appendix I, f(2) to this part as "closed rack" shall be deleted from the calculation of cycle torque and power validation statistics. Associated reference and feedback brake horsepower points shall be set equal to zero for purposes of calculating integrated power-hour for diesel engines, and also for gasoline engines whenever the reference torque is less than zero percent. (Note the regression deletions specified in Figure N84–11.)

FIGURE N84–11

	Regression line tolerances		BHP
	Speed (rpm)	Torque	
Standard Error of Estimate (SE) of Y on X.	100	13% of Power Map Maximum Engine Torque.	8% of Power Map Maximum BHP.
Slope of the Regression Line, m.	.970–1.030	0.83–1.03 hot ... 0.77–1.03 cold.	0.89–1.03 (hot). 0.87–1.03 (cold).
Coefficient of Determination, r^2	0.9700[1]	0.8800 (hot) [1] ... 0.8500 (cold) [1].	0.9100 [1].
Y Intercept of the Regression Line, b.	±50	±15 ft. lbs.....	±5.0 BHP

Permitted point deletions from regression analysis

Condition	Points to be deleted
First 24 Seconds (±1) of Free Idle of Hot and Cold Cycles.	Speed, Torque, BHP
Wide-Open Throttle, and Speed Control, and Torque Feedback < Torque Reference.	Torque, BHP
Wide-Open Throttle, and Torque Control, and Speed Feedback < Speed Reference.	Speed, BHP
Speed Control, and Gasoline-fueled Engine, and Closed Throttle, and Torque Reference < Torque Feedback, and:	Torque, BHP
A. Manual Transmission, and Reference Torque Not Equal to Zero, or	
B. Automatic Transmission, and Reference Torque Not Equal to Curb Idle Transmission Torque.	
Speed Control, and Diesel Engine, and Reference Torque Equals "Closed Rack"	Torque, BHP
Gasoline-fueled Engine, and Equipped With Automatic Choke, and First 150 Seconds of Cold Cycle or First 30 Seconds of Hot Cycle, and Closed Throttle, and No Clutch (or with clutch engaged during idle periods), and:	
A. Manual Transmission, and Torque Feedback is Equal To Zero (±10 ft. lbs.), or	Speed, BHP.
B. Automatic Transmission, and Torque Feedback is Equal To Curb Idle Transmission Torque (±10 ft. lbs.).	Speed, BHP
Engine Equipped with an Operating Clutch, and Clutch Disengaged.	Speed, BHP

[1] Minimum.

§ 86.1342–84 Calculations; exhaust emissions.

(a) The final reported transient emission test results shall be computed by use of the following formula:

$$A_{wm} = \frac{\frac{1}{7}(g_c) + \frac{6}{7}(g_H)}{\frac{1}{7}(BHP\text{-}hr_c) + \frac{6}{7}(BHP\text{-}hr_H)}$$

Where:

A_{wm} = Weighted mass emission level (HC, CO, CO_2, or NO_x) in grams per brake horsepower-hour.

g_c = Mass emission level in grams, measured during the cold start test.

g_H = Mass emission level in grams, measured during the hot start test.

$BHP\text{-}hr_c$ = Total brake horsepower-hour (brake horsepower integrated over time) for the cold start test.

$BHP\text{-}hr_H$ = Total brake horsepower-hour (brake horsepower integrated over time) for the hot start test.

(b) The mass of each pollutant for the cold start test and the hot start test for bag measurements and diesel heat exchanger sample system measurements is determined from the following equations:

(1) Hydrocarbon mass:

$$HC_{mass} = V_{mix} \times Density_{HC} \times (HC_{conc}/10^6)$$

(2) Oxides of nitrogen mass:

$$NOx_{mass} = V_{mix} \times Density_{NO_2} \times K_H \times (NOx_{conc}/10^6)$$

(3) Carbon monoxide mass:

$$CO_{mass} = V_{mix} \times Density_{CO} \times (CO_{conc}/10^6).$$

(4) Carbon dioxide mass:

$$CO_{2_{mass}} = V_{mix} \times Density_{CO_2} \times (CO_{2_{conc}}/10^2)$$

(c) The mass of each pollutant for the cold start test and the hot start test for flow compensated sample systems is determined from the following equations:

$$(1)\ HC_{mass} = \sum_{i=1}^{n} \left[\frac{(HC_e)_i}{10^6} \times (V_{mix})_i \times (Density_{HC}) \times \Delta T/T\right] - \frac{HC_d}{10^6}\left(1-\frac{1}{DF}\right) \times V_{mix} \times Density_{HC}$$

$$(2)\ NOx_{mass} = K_H \times \sum_{i=1}^{n} \left[\frac{(NO_x)_i}{10^6} \times (V_{mix})_i \times (Density_{NO_2}) \times \Delta T/T\right] - K_H \times \frac{NOx_d}{10^6}\left(1-\frac{1}{DF}\right) \times V_{mix} \times Density_{NO_2}$$

$$(3)\ CO_{mass} = \sum_{i=1}^{n} \left[\frac{(CO_e)_i}{10^6} \times (V_{mix})_i \times (Density_{CO}) \times \Delta T/T\right] - \frac{CO_d}{10^6}\left(1-\frac{1}{DF}\right) \times V_{mix} \times Density_{CO}$$

$$(4)\ CO_{2_{mass}} = \sum_{i=1}^{n} \left[\frac{(CO_{2_e})_i}{10^2} \times (V_{mix})_i \times (Density_{CO_2}) \times \Delta T/T\right] - \frac{CO_{2_d}}{10^2}\left(1-\frac{1}{DF}\right) \times V_{mix} \times Density_{CO_2}$$

(d) Meaning of symbols:

(1) HC_{mass} = Hydrocarbon emissions, in grams per test phase

$Density_{HC}$ = Density of hydrocarbons is 16.33 g/ft³ (.5768 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85, at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure

HC_{conc} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent (i.e., equivalent propane X3)

$HC_{conc} = HC_e - HC_d[1-(1/DF)]$

Where:

HC_e = Hydrocarbon concentration of the dilute exhaust bag sample or, for diesel heat exchanger systems, average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated HC traces, in ppm carbon equivalent. For flow compensated sample systems $(HC_e)_i$ is the instantaneous concentration

HC_d = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent

$$CO_{2_e} = \left(\frac{44.010}{12.011+(1.008)}\right)\left(\frac{M'(453.6)}{Density_{CO_2}}\right)\frac{100}{V_{mix}}$$

M' = Fuel mass consumed during the test cycle

R = Relative humidity of the dilution air, in percent

CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm

$CO_d = (1-0.000323R)CO_{dm}$

Where:

CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm

Note.—If a CO instrument which meets the criteria specified in § 86.1311–84 is used and the conditioning column has been deleted, CO_{em} can be substituted directly for CO_e and CO_{dm} can be substituted directly for CO_d

(2) NOx_{mass} = Oxides of nitrogen emissions, in grams per test phase

$Density_{NO^2}$ = Density of oxides of nitrogen is 54.16 g/ft³ (1.913 kg/m³), assuming they are in the form of nitrogen dioxide, at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure

NOx_{conc} = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm:

$NOx_{conc} = NOx_e - NOx_d[1-(1/DF)]$

Where:

NOx_e = Oxides of nitrogen concentration of the dilute exhaust bag sample as measured, in ppm. For flow compensated sample systems $(NOx_e)_i$ is the instantaneous concentration.

NOx_d = Oxides of nitrogen concentration of the dilute air as measured, in ppm

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase

$Density_{CO}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure

CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm

$CO_{conc} = CO_e - CO_d[1-(1/DF)]$

Where:

CO_e = Carbon monoxide concentration of the dilute exhaust bag sample volume corrected for water vapor and carbon dioxide extraction, in ppm. For flow compensated sample systems $(CO_e)_i$ is the instantaneous concentration. (The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.)

$CO_e = [1-0.01925CO_{2_e}-0.000323R]CO_{em}$

Where:

CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm

CO_{2_e} = Carbon dioxide concentration of the dilute exhaust bag sample, in percent, if measured. For flow compensated sample systems $(CO_{2_{ei}})$ is the instantaneous concentration. For cases where exhaust sampling of CO_2 is not performed, the following approximation is permitted:

(4) $CO_{2_{mass}}$ = Carbon dioxide emissions, in grams per test phase

Density CO_2 = Density of carbon dioxide is 51.81 g/ft³ (1.843 kg/m³), at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure

$CO_{2_{conc}}$ = Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent

$CO_{2_{conc}} = CO_{2_e} - CO_{2_d}[1-(1/DF)]$

Where:

CO_{2_d} = Carbon dioxide concentration of the dilution air as measured, in percent

(5) $DF = 13.4/[CO_{2e} + (HC_e + CO_e) \times 10^{-4}]$, or $DF = 13.4/CO_{2'e}$

(6) K_H = Humidity correction factor

For gasoline engines:

$K_H = 1/[1 - 0.0047\ (H - 75)]$

(or for SI units $= 1/[1 - 0.0329\ (H - 10.71)]$)

For diesel engines;

$K_H = 1/[1 - 0.0026\ (H - 75)]$

(or for SI units $= 1/[1 - 0.0182\ (H - 10.71)]$)

Where:

H = Absolute humidity of the engine intake air in grains (grams) of water per pound (kilogram) of dry air

$H = [(43.518) R_i \times P_d]/[P_B - (P_d \times R_i/100)]$, and

$= [(6.217) R_i \times P_d]/[P_B - (P_d \times R_i/100)]$ for SI units

R_i = Relative humidity of the engine intake air, in percent

P_e = Saturated vapor pressure, in mm Hg (kPa) at the engine intake air dry bulb temperature

P_B = Barometric pressure, in mm Hg (kPa)

(7) V_{mix} = Total dilute exhaust volume in cubic feet per test phase corrected to standard conditions (528°R) (293°K) and 760 mm Hg (101.3 kPa).

$(V_{mix})_i$ = Instantaneous dilute exhaust volumetric flow rate (for compensated flow systems), in cubic feet per second

ΔT = Time interval (seconds) between samples in flow compensated systems

T = Total sampling time (seconds)

For PDP-CVS:

$$V_{mix} = V_o \times \frac{N(P_B - P_A)\ (528°R)}{(760\ mm\ Hg)\ (T_p)} \quad \text{and}$$

$$= V_o \times \frac{N(P_B - P_A)\ (293.15°K)}{(101.3\ kPa)\ (T_p)}, \text{ for SI units}$$

Where:

V_o = Volume of gas pumped by the positive displacement pump, in cubic feet (cubic metres) per revolution. This volume is dependent on the pressure differential across the positive displacement pump

N = Number of revolutions of the positive displacement pump during the test phase while samples are being collected

P_B = Barometric pressure, in mm Hg (kPa)

P_A = Pressure depressions below atmospheric measured at the inlet to the positive displacement pump, in mm Hg (kPa) (during an idle mode)

T_p = Average temperature of dilute exhaust entering positive displacement pump during test, °R(°K)

(e) Sample calculation of mass values of exhaust emissions:

(1) Assume the following test results for a gasoline engine:

	Cold start cycle test results	Hot start cycle test results
V_{mix}	6924 ft³	6873 ft³
R	30.2%	30.2%
R_i	30.2%	30.2%
P_B	735 mm Hg	735 mm Hg
P_d	22.676 mm Hg	22.676 mm Hg
HC_c	132.07 ppm C equiv.	86.13 ppm C equiv.
NOx_c	7.86 ppm	10.98 ppm
CO_{2e}	171.22 ppm	114.26 ppm
CO_{2e}	.178%	.381%
HC_d	3.60 ppm C equiv.	8.70 ppm C equiv.
NOx_d	0.0 ppm	0.10 ppm
CO_{2d}	0.89 ppm	0.89 ppm
CO_{2d}	0.0%	0.036%
BHP-hr	0.259	0.347

Then:

Cold Start Test

$H = [(43.478)\ (30.2)\ (22.676)]\ /[735 - (22.676)\ (30.2)/100] = 41$ grains of water per pound of dry air

$K_H = 1/[1 - 0.0047(41 - 75)] = 0.862$

$CO_e = [1 - 0.01925(.178) - 0.000323(30.2)]\ 171.22 = 169.0$ ppm

$CO_d = [1 - 0.000323(30.2)]0.89 = .881$ ppm

$DF = 13.4/[.178 + (132.07 + 169.0)(10^{-4})] = 64.390$

$HC_{conc} = 132.1 - 3.6[1 - (1/64.390)] = 128.6$ ppm

$HC_{mass} = 6924(16.33)(128.6/1,000,000) = 14.53$ grams

$NOx_{conc} = 7.86 - 0.0[1 - (1/64.390)] = 7.86$ ppm

$NOx_{mass} = 6924(54.16)(.862)(7.86/1,000,000) = 2.54$ grams

$CO_{conc} = 169.0 - .881[1 - 1/64.390)] = 168.0$ ppm

$CO_{mass} = 6924(32.97)(168.0/1,000,000) = 38.35$ grams

$CO_{2\ conc} = .178 - 0[1 - 1/64.390)] = .178\%$

$CO_{2\ mass} = 6924(51.81)(.178/100) = 639$ grams

Hot Start Test

Similar calculations result in the following:

$HC_{mass} = 8.72$ grams

$NOx_{mass} = 3.49$ grams

$CO_{mass} = 25.70$ grams

$CO_{2\ mass} = 1226$ grams

(2) Weighted mass emission results:

$$HC_{wm} = \frac{1/7(14.53)+6/7(8.72)}{1/7(0.259)+6/7(0.347)} = 28.6 \text{ grams/BHP-hr}$$

$$NOx_{wm} = \frac{1/7(2.54)+6/7(3.49)}{1/7(0.259)+6/7(0.347)} = 10.0 \text{ grams/BHP-hr}$$

$$CO_{wm} = \frac{1/7(38.35)+6/7(25.70)}{1/7(0.259)+6/7(0.347)} = 82.2 \text{ grams/BHP-hr}$$

$$CO_{2\,wm} = \frac{1/7(639)+6/7(1226)}{1/7(0.259)+6/7(0.347)} = 3415 \text{ grams/BHP-hr}$$

(f) The final reported brake-specific fuel consumption (BSFC) shall be computed by use of the following formula:

$$BSFC = \frac{1/7(M_C)+6/7(M_H)}{1/7(BHP\text{-}hr_C)+6/7(BHP\text{-}hr_H)}$$

Where:

BSFC = brake-specific fuel consumption in pounds of fuel per brake horsepower-hour (lbs/BHP-hr)

M_C = mass of fuel, in pounds, used by the engine during the cold start test

M_H = mass of fuel, in pounds, used by the engine during the hot start test

$BHP\text{-}hr_C$ = total brake horsepower-hours (brake horsepower integrated with respect to time) for the cold start test

$BHP\text{-}hr_H$ = total brake horsepower-hours (brake horsepower integrated with respect to time) for the hot start test

(g) The mass of fuel for the cold start and hot start test is determined from mass fuel flow measurements made during the tests, or from the following equation:

$M = (G_s/R_s)(1/453.6)$

(1) Meaning of symbols:

M = Mass of fuel, in pounds, used by the engine during the cold or hot start test

G_s = Grams of carbon measured during the cold or hot start test:

$G_s = [12.011/(12.011+\alpha(1.008))]HC_{mass} + 0.429CO_{mass} + 0.273CO_{2\,mass}$

Where:

HC_{mass} = Hydrocarbon emissions, in grams for cold or hot start test

CO_{mass} = carbon monoxide emissions, in grams for cold or hot start test

$CO_{2\,mass}$ = Carbon dioxide emissions, in grams for cold or hot start test

α = The atomic hydrogen to carbon ratio of the fuel

R_s = The grams of carbon in the fuel per gram of fuel

$R_s = 12.011/[12.011+\alpha(1.008)]$

(h) Sample calculation of brake-specific fuel consumption:

(1) Assume the following test results:

	Cold start cycle test results	Hot start cycle test results
BHP-hr	6.945	7.078
	1.85	1.85
HC mass (grams)	37.08	28.82
CO mass (grams)	357.69	350.33
CO_2 mass (grams)	5,419.62	5,361.32

Then:

G_s for cold start test = [12.011/(12.011+(1.85)(1.008))](37.08)+0.429(357.69)+0.273(5419.62) = 1665.10 grams

G_s for hot start test = [12.011/(12.011+(1.85)(1.008))](28.82)+0.429(350.33)+0.273(5361.32) = 1638.86 grams

$R_s = 12.011/[12.011+1.85(1.008)] = .866$

$M_c = (1665.10/.866)(1/453.6) = 4.24$ lbs. (calculated), or

= 4.42 lbs. (directly measured).

$M_H = (1638.86/.866)(1/453.6) = 4.17$ lbs. (calculated), or

= 4.17 lbs. (directly measured).

(2) Brake-specific fuel consumption results:

$$BSFC = \frac{1/7(4.24)+6/7(4.17)}{1/7(6.945)+6/7(7.078)} = .592 \text{ lbs. of fuel/BHP-hr}$$

(i) For dilute sampling systems which require conversion of as-measured dry concentrations to wet concentrations, the following equation shall be used for any combination of bagged, continuous, or fuel mass-approximated sample measurements (except for CO measurements made through conditioning columns, as explained in paragraph (d)(3) of this section):

Wet concentration = K_w x dry concentration.

Where:

$$K_w = 1 - .00925CO_{2s}(') - \frac{1.608\times H'}{7000+H'}, \text{ or}$$

$$= 1 - .00925CO_{2s}(') - \frac{1.608\times H'}{1000+H'} \quad \text{for SI units}$$

$CO_{2s}(')$ = either CO_{2s} or CO'_{2s}, as applicable

H' = Absolute humidity of the CVS dilution air in grains (grams) of water per pound (kilogram) of dry air

$H' = [(43.518)R_i' \times P_d']/[P_B - (P_d' \times R_i'/100)]$, and

$= [(6.217)R_i' \times P_d']/[P_B - (P_d' \times R_i'/100)]$ for SI units

R_i' = Relative humidity of the CVS dilution air, in percent

P_d' = Saturated vapor pressure, in mm Hg (kPa) at the ambient dry bulb temperature of the CVS dilution air

P_B = Barometric pressure, in mm Hg (kPa)

§ 86.1343-84 [Reserved]

§ 86.1344-84 Required information.

(a) The required test data shall be grouped into the following three general categories:

(1) *Engine set-up and descriptive data.* This data must be provided to the EPA supervisor of engine testing for each engine sent to the Administrator for confirmatory testing prior to the initiation of engine set-up. This data is necessary to ensure that EPA test personnel have the correct data in order

to set up and test the engine in a timely and proper manner. This data is not required for tests performed by the manufacturers.

(2) *Pre-test data.* This data is general test data that must be recorded for each test. The data is of a more descriptive nature such as identification of the test engine, test site number, etc. As such, this data can be recorded at any time within 24 hours of the test.

(3) *Test-data.* This data is physical test data that must be recorded at the time of testing.

(b) All data may be supplied to the Administrator by punch cards, magnetic tape, or other electronic data processing means. Acceptable data formats and transmission techniques will be provided in the Application Format for Certification of the applicable Model Year.

(c) *Engine set-up data.* Because specific test facilities may change with time, the specific data parameters and number of items may vary. The Application Format for Certification for the applicable Model Year will specify exact requirements. In general, the following type of data will be required:

(1) Engine manufacturer.

(2) Engine system combination.

(3) Engine code and CID.

(4) Engine identification number.

(5) Applicable engine model year.

(6) Engine fuel type.

(7) Recommended oil type.

(8) Exhaust pipe configuration, pipe sizes, etc.

(9) Curb idle speed.

(10) Dynamometer idle speed. (Automatic transmission engines only.)

(11) Engine parameter specification such as spark timing, operating temperature, advance curves, etc.

(12) Engine performance data such as maximum BHP, previously measured rated rpm, fuel consumption, governed speed, etc.

(13) Recommended start-up procedure.

(14) Maximum safe engine operating speed.

(15) Number of hours of operation accumulated on engine.

(16) Manufacturer's recommended inlet depression limit and typical in-use inlet depression level.

(17) Exhaust system.

(i) *Diesel engines.*

(A) Header pipe inside diameter.

(B) Tailpipe inside diameter.

(C) Minimum distance in-use between the exhaust manifold flange and the exit of the chassis exhaust system.

(D) Manufacturer's recommended maximum exhaust backpressure limit for the engine.

(E) Typical backpressure, as determined by typical application of the engine.

(F) Minimum backpressure required to meet applicable noise regulations.

(ii) *Gasoline-fueled engines.* Typical in-use backpressure in vehicle exhaust system.

(d) *Pre-test data.* The following data shall be recorded, and reported to the Administrator for each test conducted for Compliance with the provisions of 40 CFR 86, Subpart A:

(1) Engine-system combination.

(2) Engine identification.

(3) Instrument operator(s).

(4) Engine operator(s).

(5) Number of hours of operation accumulated on the engine prior to beginning the test sequence (Figure N84–10).

(6) Fuel identification, fuel specifications of test fuel used.

(7) Date of most recent analytical assembly calibration.

(8) All pertinent instrument information such as tuning, gain, serial numbers, detector number, calibration curve number, etc. As long as this information is traceable, it may be summarized by system number or analyzer identification numbers.

(e) *Test data.* The physical parameters necessary to compute the test results and ensure accuracy of the results shall be recorded for each test conducted for compliance with the provisions of 40 CFR Part 86, Subpart A. Additional test data may be recorded at the discretion of the manufacturer. Extreme details of the test measurements such as analyzer chart deflections will generally not be required on a routine basis to be reported to the Administrator for each test, unless a dispute about the accuracy of the data arises. The following type of data shall be required to be reported to the Administrator. The Application Format for Certification for the applicable Model Year will specify the exact requirements which may change slightly from year to year with the addition or deletion of certain items.

(1) Date and time of day.

(2) Test number.

(3) Engine intake air or test cell temperature.

(4) Barometric pressure.

Note.— A central laboratory barometer may be used; *Provided,* that individual test cell barometric pressure are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(5) Engine intake or test cell and CVS dilution air humidity.

(6) Maximum torque versus speed curve as determined in § 86.1332–84, with minimum and maximum engine speeds, and a description of the mapping technique used.

(7) Measured maximum horsepower and maximum torque speeds.

(8) Measured maximum horsepower and torque.

(9) Measured high idle engine speed (governed diesel engines only).

(10) Measured fuel consumption at maximum power and torque (diesel engines only).

(11) Cold soak time interval and cool down procedures.

(12) Temperature set point of the heated continuous analysis system components (if applicable).

(13) Test cycle validation statistics as specified in § 86.1341–84 for each test phase (cold-hot).

(14) Total CVS flow rate with dilution factor for each test phase (cold-hot).

(15) Sample concentrations (background corrected) for HC, CO, CO2, and NOx for each test phase (cold-hot).

(16) Brake specific emissions (g/BHP-hr) for HC, CO and NOx for each test phase (cold-hot).

(17) The weighted (cold-hot) brake specific emissions (g/BHP-hr) for the total test.

(18) The weighted (cold-hot) carbon balance or mass-measured brake specific fuel consumption for the total test.

(19) The number of hours of operation accumulated on the engine after completing the test sequences described in Figure N84–10.

40. Paragraph (f) to Appendix I of Part 86 is revised to read as follows:

Appendix I—Urban Dynamometer Schedules

* * * * *

(f) (1) EPA Engine Dynamometer Schedule for Heavy-Duty Gasoline-Fueled Engines.

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
1	0.0	0.0
2	0.0	0.0
3	0.0	0.0
4	0.0	0.0
5	0.0	0.0
6	0.0	0.0
7	0.0	0.0
8	0.0	0.0
9	0.0	0.0
10	0.0	0.0
11	0.0	0.0
12	0.0	0.0
13	0.0	0.0
14	0.0	0.0
15	0.0	0.0
16	0.0	0.0
17	0.0	0.0
18	0.0	0.0
19	0.0	0.0
20	0.0	0.0
21	0.0	0.0

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
22	0.0	0.0
23	0.0	0.0
24	0.0	0.0
25	7.00	44.40
26	16.00	85.40
27	27.00	97.80
28	38.00	100.00
29	45.00	100.00
30	51.00	100.00
31	54.00	97.50
32	53.00	90.00
33	49.00	75.20
34	45.00	50.00
35	40.00	70.00
36	34.00	2.30
37	27.00	0.0
38	21.00	2.30
39	16.00	12.00
40	12.00	35.30
41	8.50	4.90
42	5.00	−10.00
43	3.00	−10.00
44	0.0	−10.00
45	0.0	−10.00
46	0.0	−10.00
47	0.0	−10.00
48	0.0	−7.00
49	0.0	−4.00
50	0.0	0.0
51	3.00	10.00
52	11.00	40.20
53	20.00	53.00
54	27.50	64.80
55	32.00	78.00
56	32.00	78.00
57	27.50	56.00
58	26.00	24.40
59	24.00	−8.40
60	23.00	−10.00
61	24.00	−10.00
62	27.00	−10.00
63	34.00	−10.00
64	44.00	28.00
65	57.00	74.40
66	60.00	74.40
67	53.00	33.60
68	48.00	−10.00
69	44.00	−10.00
70	40.00	−10.00
71	40.00	7.00
72	44.00	22.70
73	46.00	30.00
74	46.00	32.00
75	44.00	25.00
76	40.00	18.00
77	37.00	14.00
78	36.00	10.00
79	34.00	0.0
80	34.00	−10.00
81	32.00	−10.00
82	31.00	−10.00
83	36.00	39.90
84	42.00	84.70
85	48.00	90.00
86	50.00	90.00
87	50.00	90.00
88	47.00	85.00
89	43.00	75.00
90	38.00	60.00
91	36.00	36.00
92	36.00	7.50
93	36.30	−10.00
94	45.00	64.50
95	53.00	67.00
96	58.00	64.50
97	62.00	60.30
98	63.00	55.50
99	62.00	52.30
100	61.00	47.00
101	55.00	44.00
102	50.00	39.00
103	45.00	36.00
104	40.00	34.00
105	36.00	30.00
106	34.00	25.80
107	32.00	20.00
108	30.00	14.60
109	26.00	10.00
110	23.00	0.0
111	18.00	−8.00
112	16.00	−10.00
113	18.00	−8.00
114	20.00	27.60
115	17.00	4.00
116	14.00	−8.00
117	12.00	−10.00
118	9.00	−10.00
119	7.00	−10.00
120	7.00	−10.00
121	5.00	−10.00
122	4.00	−10.00
123	3.00	−10.00
124	2.00	−8.00
125	0.0	−3.80
126	0.0	−0.70
127	0.0	0.0
128	0.0	0.0
129	0.0	0.0
130	5.00	8.00
131	8.00	16.30
132	10.00	27.50
133	8.00	27.50
134	5.00	9.00
135	2.00	1.80
136	0.0	0.0
137	0.0	0.0
138	0.0	0.0
139	0.0	0.0
140	0.0	0.0
141	0.0	0.0
142	0.0	0.0
143	0.0	0.0
144	0.0	0.0
145	0.0	0.0
146	0.0	0.0
147	0.0	0.0
148	0.0	0.0
149	2.00	4.80
150	1.00	4.50
151	0.0	0.0
152	0.0	0.0
153	0.0	0.0
154	0.0	0.0
155	0.0	0.0
156	0.0	0.0
157	0.0	0.0
158	0.0	0.0
159	0.0	0.0
160	0.0	0.0
161	0.0	0.0
162	0.0	0.0
163	0.0	0.0
164	0.0	0.0
165	0.0	0.0
166	0.0	0.0
167	8.00	27.00
168	18.00	65.00
169	23.00	82.50
170	23.00	88.00
171	21.00	88.00
172	18.00	81.30
173	17.00	32.00
174	15.00	−10.00
175	13.00	−10.00
176	11.00	−10.00
177	8.00	−10.00
178	6.00	−10.00
179	4.00	−10.00
180	2.00	−10.00
181	0.0	0.0
182	0.0	0.0
183	0.0	0.0
184	0.0	0.0
185	0.0	0.0
186	0.0	0.0
187	0.0	0.0
188	0.0	0.0
189	0.0	0.0
190	0.0	0.0
191	0.0	0.0
192	0.0	0.0
193	0.0	0.0
194	0.0	0.0
195	0.0	0.0
196	0.0	0.0
197	0.0	0.0
198	0.0	0.0
199	0.0	0.0
200	0.0	0.0
201	0.0	0.0
202	0.0	0.0
203	0.0	0.0
204	0.0	4.00
205	0.50	7.70
206	5.00	14.00
207	11.00	24.70
208	15.00	42.30
209	16.00	70.00
210	17.00	70.00
211	17.00	50.00
212	16.00	26.30
213	14.00	5.00
214	10.00	−10.00
215	10.00	−10.00
216	14.00	73.30
217	18.00	83.00
218	19.00	84.80
219	18.00	84.80
220	16.00	82.80
221	11.00	74.00
222	7.00	8.50
223	4.00	0.0
224	0.0	0.0
225	0.0	0.0
226	0.0	0.0
227	0.0	0.0
228	0.0	0.0
229	0.0	0.0
230	0.0	0.0
231	0.0	0.0
232	0.0	0.0
233	6.00	17.60
234	6.00	19.60
235	5.00	14.00
236	3.00	9.80
237	1.00	5.50
238	0.0	3.00
239	0.0	0.0
240	0.0	0.0
241	0.0	0.0
242	0.0	0.0
243	0.0	0.0
244	0.0	0.0
245	0.0	0.0
246	0.0	0.0
247	0.0	0.0
248	0.0	0.0
249	0.0	0.0
250	0.0	0.0
251	0.0	0.0
252	0.0	0.0
253	0.0	0.0
254	0.0	0.0
255	0.0	0.0
256	0.0	0.0
257	0.0	0.0
258	0.0	0.0
259	0.0	0.0
260	0.0	0.0
261	0.0	0.0
262	0.0	0.0
263	0.0	0.0
264	0.0	0.0
265	0.0	0.0
266	0.0	0.0
267	0.0	0.0
268	0.0	0.0
269	0.0	0.0
270	0.0	0.0
271	0.0	0.0
272	0.0	0.0
273	0.0	0.0
274	0.0	0.0
275	0.0	0.0
276	0.0	0.0
277	0.0	0.0
278	0.0	0.0
279	0.0	0.0
280	0.0	0.0
281	0.0	7.00
282	1.00	10.00
283	2.00	11.50
284	1.00	10.00
285	0.0	0.0
286	0.0	0.0
287	0.0	0.0
288	0.0	0.0
289	0.0	0.0
290	0.0	0.0
291	0.0	0.0
292	0.0	0.0
293	0.0	0.0
294	0.0	0.0

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
295	0.0	0.0
296	0.0	0.0
297	0.0	0.0
298	0.0	0.0
299	0.0	28.00
300	0.0	30.00
301	2.00	32.00
302	6.00	34.00
303	14.00	36.00
304	19.00	36.00
305	24.50	36.00
306	24.50	36.00
307	24.00	30.00
308	19.00	24.00
309	13.00	18.00
310	9.00	14.00
311	7.00	8.00
312	6.00	0.0
313	4.00	3.00
314	3.00	6.80
315	0.0	0.0
316	0.0	0.0
317	0.0	0.0
318	0.0	0.0
319	0.0	0.0
320	0.0	0.0
321	0.0	0.0
322	0.0	0.0
323	0.0	18.00
324	3.00	40.00
325	8.00	86.00
326	18.00	97.00
327	38.00	100.00
328	45.50	100.00
329	45.00	96.00
330	44.00	84.40
331	43.00	53.60
332	41.00	5.00
333	43.00	47.60
334	44.00	90.00
335	45.00	90.00
336	44.00	73.00
337	40.00	54.00
338	38.00	34.70
339	36.00	10.00
340	35.00	10.00
341	35.00	10.00
342	35.50	60.00
343	36.00	57.90
344	37.00	53.00
345	39.00	50.00
346	40.50	50.00
347	43.00	50.00
348	45.00	50.00
349	48.00	50.00
350	51.00	52.00
351	56.00	58.70
352	64.00	70.00
353	68.00	70.00
354	70.00	70.00
355	65.50	64.60
356	61.00	28.90
357	55.00	−5.00
358	50.00	−10.00
359	45.00	−10.00
360	38.00	−10.00
361	28.00	−10.00
362	19.00	−10.00
363	14.00	−10.00
364	7.00	−10.00
365	2.00	−5.00
366	3.00	5.00
367	7.00	25.00
368	9.00	38.00
369	7.00	17.00
370	4.00	2.00
371	3.00	−9.00
372	3.00	−10.00
373	11.00	70.00
374	15.00	97.60
375	16.00	100.00
376	19.00	100.00
377	26.00	100.00
378	29.00	95.00
379	25.00	63.00
380	19.00	−10.00
381	12.00	−10.00
382	8.00	−10.00
383	5.00	−10.00
384	2.00	−10.00
385	1.00	−10.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
386	0.0	−5.00
387	0.0	0.0
388	0.0	0.0
389	0.0	0.0
390	0.0	0.0
391	0.0	0.0
392	0.0	0.0
393	0.0	0.0
394	0.0	0.0
395	0.0	0.0
396	0.0	0.0
397	0.0	0.0
398	0.0	0.0
399	0.0	0.0
400	0.0	0.0
401	0.0	0.0
402	0.0	0.0
403	0.0	0.0
404	0.0	0.0
405	0.0	0.0
406	0.0	0.0
407	0.0	0.0
408	0.0	0.0
409	0.0	0.0
410	0.0	0.0
411	0.0	0.0
412	0.0	0.0
413	0.0	0.0
414	0.0	0.0
415	0.0	0.0
416	0.0	0.0
417	0.0	0.0
418	0.0	0.0
419	4.00	20.00
420	4.00	20.00
421	0.0	0.0
422	0.0	0.0
423	0.0	0.0
424	0.0	0.0
425	0.0	0.0
426	0.0	0.0
427	0.0	0.0
428	0.0	0.0
429	0.0	0.0
430	2.00	0.0
431	6.00	2.00
432	14.00	28.80
433	20.00	30.00
434	24.40	11.00
435	24.00	10.00
436	24.00	12.00
437	28.00	52.00
438	32.00	52.00
439	34.00	46.00
440	34.00	30.00
441	34.50	30.00
442	35.00	30.00
443	36.00	35.00
444	39.00	40.00
445	45.00	50.00
446	49.00	56.00
447	50.00	−8.00
448	45.00	−10.00
449	39.00	−10.00
450	34.00	−10.00
451	28.00	−10.00
452	25.00	−10.00
453	21.00	−10.00
454	18.00	−10.00
455	15.00	−10.00
456	12.00	−10.00
457	18.00	−8.00
458	29.00	19.80
459	40.00	54.00
460	52.00	82.00
461	64.00	95.00
462	71.00	99.00
463	77.00	100.00
464	84.00	100.00
465	85.00	99.00
466	85.00	95.00
467	84.00	90.00
468	82.00	84.60
469	80.00	78.50
470	78.00	78.50
471	77.00	70.00
472	76.00	65.50
473	74.00	61.50
474	72.00	56.00
475	70.00	52.00
476	68.00	46.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
477	66.50	40.00
478	65.00	32.00
479	63.00	26.00
480	61.00	25.80
481	61.00	72.00
482	61.00	78.00
483	56.00	72.00
484	50.00	64.00
485	44.00	55.00
486	35.00	40.00
487	26.00	20.00
488	21.00	−4.00
489	18.00	−10.00
490	16.00	−10.00
491	19.00	−8.00
492	24.00	2.00
493	32.00	68.50
494	45.00	78.00
495	51.00	86.00
496	58.00	92.00
497	64.00	97.00
498	71.00	100.00
499	73.00	98.00
500	73.00	94.00
501	73.00	86.00
502	73.00	82.00
503	76.00	84.00
504	80.00	98.00
505	84.00	100.00
506	85.00	100.00
507	84.00	100.00
508	81.00	92.00
509	75.00	80.00
510	73.00	70.00
511	70.00	60.00
512	67.00	53.00
513	65.00	45.00
514	63.00	36.50
515	62.00	28.00
516	61.00	22.50
517	60.00	23.00
518	60.00	24.00
519	60.00	24.00
520	60.00	26.00
521	61.00	60.00
522	62.00	64.00
523	63.00	64.00
524	64.00	64.00
525	62.00	64.00
526	56.00	60.00
527	53.00	−7.00
528	49.00	−10.00
529	47.00	−10.00
530	46.00	−10.00
531	45.00	−7.00
532	45.00	30.00
533	46.00	50.00
534	46.00	50.00
535	47.00	50.00
536	47.00	50.00
537	47.00	30.00
538	46.00	12.00
539	45.00	10.50
540	44.00	10.00
541	41.00	10.00
542	37.00	9.00
543	36.00	2.00
544	35.00	−10.00
545	38.00	67.00
546	35.00	−10.00
547	31.00	15.00
548	28.00	55.00
549	34.00	44.00
550	35.00	38.50
551	36.00	38.50
552	36.00	38.50
553	37.00	38.50
554	39.00	36.00
555	42.00	27.00
556	45.00	62.00
557	48.00	45.00
558	51.00	15.00
559	51.00	8.00
560	51.00	6.00
561	48.00	10.00
562	46.00	11.00
563	44.00	13.00
564	41.00	17.00
565	37.00	20.00
566	34.00	20.00
567	30.00	17.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
568	26.00	14.00
569	23.00	7.00
570	19.00	2.00
571	15.00	−5.00
572	11.00	−10.00
573	8.00	−10.00
574	5.00	−8.00
575	2.00	−5.00
576	0.0	0.0
577	0.0	0.0
578	0.0	0.0
579	0.0	0.0
580	0.0	0.0
581	0.0	0.0
582	0.0	0.0
583	4.00	15.00
584	19.00	31.00
585	30.00	46.00
586	37.00	58.00
587	40.00	76.00
588	41.00	77.00
589	40.50	78.00
590	40.00	77.00
591	40.00	64.00
592	38.00	10.00
593	38.00	25.00
594	40.00	50.00
595	40.00	36.00
596	40.00	31.00
597	40.00	31.00
598	41.00	37.00
599	42.00	97.00
600	43.00	100.00
601	45.00	100.00
602	47.00	100.00
603	48.00	100.00
604	49.00	100.00
605	51.00	97.00
606	52.00	94.00
607	53.00	90.00
608	54.00	87.00
609	56.00	86.00
610	56.00	85.00
611	55.50	85.00
612	55.00	81.00
613	54.00	77.00
614	53.00	72.00
615	52.00	67.00
616	49.00	60.00
617	46.00	45.00
618	45.00	12.00
619	44.00	10.00
620	44.00	10.00
621	45.00	12.00
622	46.00	14.00
623	47.00	24.00
624	49.00	88.00
625	50.00	90.00
626	51.00	90.00
627	52.00	90.00
628	53.00	90.00
629	54.00	90.00
630	54.00	90.00
631	54.00	87.00
632	54.00	84.00
633	54.00	80.00
634	53.50	77.00
635	53.00	76.00
636	53.00	75.00
637	52.00	73.00
638	51.00	69.00
639	50.00	65.00
640	50.00	60.00
641	49.00	55.00
642	49.00	50.00
643	49.00	50.00
644	49.50	60.00
645	49.50	65.00
646	50.00	70.00
647	50.50	75.00
648	51.00	80.00
649	52.00	85.00
650	53.00	90.00
651	54.00	90.00
652	55.00	90.00
653	55.00	86.00
654	55.00	84.00
655	55.00	79.00
656	55.00	74.00
657	55.00	69.00
658	55.00	64.00
659	55.00	59.00
660	55.00	54.00
661	55.00	49.00
662	55.00	44.50
663	55.00	39.00
664	55.00	34.00
665	55.00	27.00
666	55.00	18.00
667	55.00	8.00
668	55.00	6.00
669	55.00	13.00
670	55.00	27.00
671	55.50	30.00
672	56.00	30.00
673	57.00	30.00
674	58.00	34.00
675	59.00	46.00
676	59.00	89.00
677	59.00	90.00
678	59.00	91.00
679	59.00	91.00
680	60.00	91.00
681	60.00	91.00
682	60.50	90.00
683	61.00	89.00
684	61.50	88.00
685	62.00	83.00
686	63.00	73.00
687	65.00	70.00
688	66.00	71.00
689	67.00	74.00
690	67.50	79.00
691	68.00	85.00
692	68.50	90.00
693	69.00	94.00
694	69.50	96.00
695	70.00	98.00
696	70.50	100.00
697	71.00	100.00
698	72.00	100.00
699	72.00	100.00
700	72.00	100.00
701	72.00	100.00
702	72.00	100.00
703	72.00	100.00
704	72.00	100.00
705	72.00	100.00
706	72.00	100.00
707	72.50	100.00
708	73.00	100.00
709	73.50	100.00
710	74.00	100.00
711	74.00	100.00
712	74.50	100.00
713	75.00	100.00
714	75.00	100.00
715	75.00	100.00
716	75.00	100.00
717	75.00	100.00
718	75.00	100.00
719	75.00	100.00
720	75.00	100.00
721	75.00	100.00
722	75.00	100.00
723	75.00	98.00
724	75.00	90.00
725	75.00	34.00
726	74.00	15.00
727	72.00	3.00
728	70.00	−7.00
729	69.00	−10.00
730	68.00	−10.00
731	70.50	53.00
732	73.00	80.00
733	75.00	88.00
734	77.00	94.00
735	79.00	97.00
736	82.00	97.00
737	85.00	98.00
738	85.00	98.00
739	87.00	97.00
740	90.00	95.00
741	92.00	90.00
742	93.00	86.00
743	94.00	86.00
744	95.00	83.00
745	96.00	79.00
746	97.00	74.00
747	98.00	68.00
748	99.00	62.00
749	100.00	54.00
750	100.00	30.00
751	100.00	22.00
752	100.00	20.00
753	100.00	22.00
754	100.00	30.00
755	100.00	65.00
756	100.00	76.00
757	100.00	80.00
758	100.00	78.00
759	100.00	72.00
760	100.00	54.00
761	95.00	30.00
762	85.00	12.00
763	68.00	−5.00
764	57.00	−9.00
765	56.00	−10.00
766	57.00	−9.00
767	57.00	−5.00
768	57.00	22.00
769	58.00	40.00
770	59.00	45.00
771	59.00	46.00
772	59.50	45.00
773	60.00	33.00
774	60.00	0.0
775	60.00	−10.00
776	60.00	−10.00
777	60.00	34.00
778	60.00	50.00
779	60.00	60.00
780	60.00	69.00
781	60.00	75.00
782	60.00	79.00
783	61.00	83.00
784	61.00	84.00
785	61.00	85.00
786	62.00	85.00
787	62.00	85.00
788	62.00	85.00
789	63.00	85.00
790	63.00	85.00
791	64.00	85.00
792	64.00	85.00
793	64.00	85.00
794	64.00	85.00
795	64.00	85.00
796	64.00	84.50
797	64.00	84.00
798	64.00	83.00
799	64.00	82.00
800	64.00	81.00
801	64.00	77.00
802	64.00	72.00
803	65.00	67.00
804	66.00	64.00
805	67.00	60.00
806	69.00	62.30
807	72.00	84.00
808	73.00	90.50
809	74.00	91.00
810	74.00	90.00
811	74.00	84.50
812	73.00	74.00
813	72.00	66.00
814	71.00	60.00
815	70.00	54.00
816	69.00	50.00
817	68.00	49.00
818	68.00	48.00
819	68.00	48.00
820	68.00	48.50
821	68.00	49.00
822	68.00	51.00
823	68.00	53.50
824	68.00	55.00
825	68.00	58.00
826	68.00	60.00
827	68.00	62.00
828	68.00	64.00
829	68.00	67.00
830	69.00	68.50
831	70.00	70.00
832	70.00	70.00
833	70.00	70.00
834	70.00	70.00
835	70.00	70.00
836	70.00	70.00
837	71.00	66.00
838	73.00	64.00
839	75.00	64.00
840	77.00	66.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
841	79.00	100.00
842	81.00	100.00
843	82.00	100.00
844	83.00	100.00
845	84.00	98.00
846	84.00	94.00
847	85.00	93.00
848	86.00	94.00
849	87.00	98.00
850	89.00	100.00
851	92.00	100.00
852	95.00	100.00
853	97.50	100.00
854	100.00	100.00
855	100.00	100.00
856	100.00	100.00
857	100.00	100.00
858	100.00	97.00
859	96.00	−6.00
860	94.00	−10.00
861	91.00	−10.00
862	88.00	−10.00
863	86.00	−10.00
864	84.00	−10.00
865	82.00	−10.00
866	79.00	−10.00
867	77.00	−10.00
868	75.00	−10.00
869	73.00	−10.00
870	72.00	−10.00
871	72.00	−10.00
872	72.00	−8.00
873	71.00	8.00
874	68.00	9.00
875	64.00	−9.00
876	58.00	−8.00
877	56.00	53.00
878	56.00	67.00
879	56.00	70.00
880	56.00	67.00
881	55.00	60.00
882	54.00	60.00
883	49.00	75.00
884	38.00	80.00
885	30.00	78.00
886	25.00	53.00
887	18.00	32.00
888	14.00	16.00
889	9.00	3.00
890	5.00	−6.00
891	1.00	−10.00
892	0.0	−7.00
893	0.0	0.0
894	0.0	0.0
895	0.0	0.0
896	0.0	0.0
897	0.0	0.0
898	0.0	0.0
899	0.0	0.0
900	0.0	0.0
901	0.0	0.0
902	0.0	0.0
903	0.0	0.0
904	0.0	0.0
905	0.0	0.0
906	0.0	0.0
907	0.0	0.0
908	0.0	0.0
909	0.0	0.0
910	0.0	0.0
911	0.0	0.0
912	0.0	0.0
913	0.0	0.0
914	0.0	0.0
915	0.0	0.0
916	0.0	0.0
917	0.0	0.0
918	0.0	0.0
919	0.0	0.0
920	4.50	47.00
921	12.00	85.00
922	30.00	97.00
923	42.00	100.00
924	51.00	100.00
925	54.00	100.00
926	54.00	97.00
927	52.00	90.00
928	48.00	75.00
929	44.00	57.00
930	37.00	47.00
931	29.00	40.00
932	24.00	34.00
933	21.00	27.00
934	22.00	24.00
935	22.50	22.00
936	20.00	16.00
937	15.00	7.00
938	10.00	0.0
939	5.00	−7.00
940	2.00	−10.00
941	1.00	−10.00
942	0.0	−10.00
943	0.0	0.0
944	0.0	0.0
945	1.00	0.0
946	5.00	20.00
947	15.00	43.00
948	28.00	52.00
949	34.00	64.00
950	37.00	74.00
951	37.50	90.00
952	37.00	56.00
953	36.00	27.00
954	35.00	−2.00
955	33.00	−8.00
956	29.00	−10.00
957	29.00	−8.00
958	29.00	−2.00
959	34.00	30.00
960	38.00	75.00
961	34.00	70.00
962	31.00	25.00
963	28.00	−7.00
964	26.00	−10.00
965	24.00	−7.00
966	23.00	4.00
967	23.00	22.00
968	24.00	30.00
969	23.00	32.00
970	22.00	25.00
971	18.00	18.00
972	16.00	14.00
973	15.00	10.00
974	15.00	0.0
975	15.00	−7.00
976	15.00	−10.00
977	18.00	−8.00
978	25.00	40.00
979	37.00	90.00
980	46.00	90.00
981	49.00	90.00
982	49.00	90.00
983	49.00	85.00
984	47.00	77.00
985	44.00	59.00
986	43.00	36.00
987	42.00	13.00
988	40.00	−10.00
989	41.00	65.00
990	44.00	65.00
991	45.00	65.00
992	45.00	62.00
993	44.00	56.00
994	42.00	46.00
995	41.00	36.00
996	39.00	20.00
997	38.00	4.00
998	37.00	33.00
999	38.00	39.00
1,000	36.00	40.00
1,001	35.00	40.00
1,002	33.00	39.00
1,003	30.00	36.00
1,004	27.00	33.00
1,005	22.00	24.00
1,006	21.00	−5.00
1,007	20.00	−10.00
1,008	18.00	−6.00
1,009	17.00	28.00
1,010	16.00	5.00
1,011	14.00	−5.00
1,012	12.00	−9.00
1,013	9.00	−10.00
1,014	7.00	−10.00
1,015	5.00	−10.00
1,016	4.00	−10.00
1,017	3.00	−10.00
1,018	2.00	−10.00
1,019	0.0	−7.00
1,020	0.0	−4.00
1,021	0.0	0.0
1,022	0.0	0.0
1,023	0.0	0.0
1,024	0.0	0.0
1,025	2.00	7.00
1,026	6.00	15.00
1,027	10.00	28.00
1,028	11.00	26.00
1,029	10.00	10.00
1,030	8.00	3.00
1,031	5.00	0.0
1,032	2.00	0.0
1,033	0.0	0.0
1,034	0.0	0.0
1,035	0.0	0.0
1,036	0.0	0.0
1,037	0.0	0.0
1,038	0.0	0.0
1,039	0.0	0.0
1,040	0.0	0.0
1,041	0.0	0.0
1,042	0.0	0.0
1,043	0.0	0.0
1,044	0.0	0.0
1,045	0.0	0.0
1,046	0.0	0.0
1,047	0.0	0.0
1,048	0.0	0.0
1,049	0.0	0.0
1,050	0.0	0.0
1,051	0.0	0.0
1,052	0.0	0.0
1,053	0.0	0.0
1,054	0.0	0.0
1,055	0.0	0.0
1,056	0.0	0.0
1,057	0.0	0.0
1,058	0.0	0.0
1,059	0.0	0.0
1,060	0.0	0.0
1,061	4.00	05.00
1,062	11.00	35.00
1,063	21.00	73.00
1,064	25.00	86.00
1,065	26.00	90.00
1,066	25.00	90.00
1,067	23.00	83.00
1,068	20.00	32.00
1,069	16.00	−6.00
1,070	14.00	−10.00
1,071	10.00	−10.00
1,072	7.00	−10.00
1,073	3.00	−10.00
1,074	1.00	−10.00
1,075	0.0	−7.00
1,076	0.0	−3.00
1,077	0.0	0.0
1,078	0.0	0.0
1,079	0.0	0.0
1,080	0.0	0.0
1,081	0.0	0.0
1,082	0.0	0.0
1,083	0.0	0.0
1,084	0.0	0.0
1,085	0.0	0.0
1,086	0.0	0.0
1,087	0.0	0.0
1,088	0.0	0.0
1,089	0.0	0.0
1,090	0.0	0.0
1,091	0.0	0.0
1,092	0.0	0.0
1,093	0.0	0.0
1,094	0.0	0.0
1,095	0.0	0.0
1,096	0.0	0.0
1,097	0.0	0.0
1,098	1.00	3.00
1,099	3.00	6.00
1,100	6.00	13.00
1,101	9.00	14.00
1,102	12.00	16.00
1,103	15.00	28.00
1,104	18.00	60.00
1,105	20.00	47.00
1,106	21.00	31.00
1,107	21.00	15.00
1,108	20.00	−2.00
1,109	20.00	−10.00
1,110	20.00	−2.00
1,111	20.00	70.00
1,112	21.00	83.00
1,113	22.00	84.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
1,114	22.00	83.00
1,115	18.00	78.00
1,116	14.00	68.00
1,117	8.00	10.00
1,118	4.00	4.00
1,119	1.00	0.0
1,120	0.0	0.0
1,121	0.0	0.0
1,122	0.0	0.0
1,123	0.0	0.0
1,124	0.0	0.0
1,125	0.0	1.00
1,126	1.00	5.00
1,127	5.00	18.00
1,128	9.00	19.00
1,129	12.00	18.00
1,130	12.00	15.00
1,131	9.00	10.00
1,132	5.00	5.00
1,133	2.00	2.00
1,134	0.0	0.0
1,135	0.0	0.0
1,136	0.0	0.0
1,137	0.0	0.0
1,138	0.0	0.0
1,139	0.0	0.0
1,140	0.0	0.0
1,141	0.0	0.0
1,142	0.0	0.0
1,143	0.0	0.0
1,144	0.0	0.0
1,145	0.0	0.0
1,146	0.0	0.0
1,147	0.0	0.0
1,148	0.0	0.0
1,149	0.0	0.0
1,150	0.0	0.0
1,151	0.0	0.0
1,152	0.0	0.0
1,153	0.0	0.0
1,154	0.0	0.0
1,155	0.0	0.0
1,156	0.0	0.0
1,157	0.0	0.0
1,158	0.0	0.0
1,159	0.0	0.0
1,160	0.0	0.0
1,161	0.0	0.0
1,162	0.0	0.0
1,163	0.0	0.0
1,164	0.0	0.0
1,165	0.0	0.0
1,166	0.0	0.0
1,167	0.0	0.0

(2) EPA Engine Dynamometer Schedule for Heavy-Duty Diesel Engines.

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
1	0.0	0.0
2	0.0	0.0
3	0.0	0.0
4	0.0	0.0
5	0.0	0.0
6	0.0	0.0
7	0.0	0.0
8	0.0	0.0
9	0.0	0.0
10	0.0	0.0
11	0.0	0.0
12	0.0	0.0
13	0.0	0.0
14	0.0	0.0
15	0.0	0.0
16	0.0	0.0
17	0.0	0.0
18	0.0	0.0
19	0.0	0.0
20	0.0	0.0
21	0.0	0.0
22	0.0	0.0
23	0.0	0.0
24	0.0	0.0
25	0.0	3.67
26	0.0	47.69
27	3.11	59.41
28	9.09	84.54
29	15.62	80.00
30	33.49	80.00
31	37.93	79.29
32	31.20	38.25
33	21.99	26.67
34	30.00	15.10
35	22.22	16.47
36	19.61	28.05
37	20.00	20.38
38	18.33	(1)
39	6.55	(1)
40	15.82	(1)
41	23.63	(1)
42	17.51	(1)
43	14.19	62.52
44	16.64	69.36
45	27.77	60.00
46	37.03	63.79
47	47.36	75.36
48	54.77	80.00
49	57.70	80.00
50	54.03	79.92
51	58.00	65.03
52	58.65	43.23
53	62.88	50.00
54	69.83	50.00
55	72.00	42.05
56	75.81	40.00
57	84.22	42.20
58	83.86	41.28
59	80.55	(1)
60	80.51	(1)
61	78.00	(1)
62	79.79	(1)
63	80.33	30.54
64	85.58	42.12
65	81.78	50.00
66	78.00	50.00
67	80.74	43.16
68	92.10	73.65
69	88.01	(1)
70	84.00	(1)
71	84.00	(1)
72	81.17	(1)
73	70.46	(1)
74	66.00	13.57
75	62.23	29.43
76	64.00	20.00
77	63.48	17.42
78	60.34	10.00
79	56.85	10.00
80	56.00	(1)
81	52.45	(1)
82	39.91	10.00
83	36.38	10.00
84	30.00	10.00
85	27.93	10.00
86	26.00	16.74
87	27.66	3.36
88	28.00	(1)
89	27.41	(1)
90	20.96	(1)
91	12.15	(1)
92	3.81	(1)
93	0.0	0.0
94	0.0	0.0
95	0.0	0.91
96	0.0	7.52
97	0.0	0.0
98	0.0	0.0
99	0.0	0.0
100	0.0	0.0
101	0.0	0.0
102	0.0	0.0
103	0.0	0.0
104	0.0	0.0
105	0.0	0.0
106	0.0	0.0
107	0.0	0.0
108	0.0	0.0
109	0.0	0.0
110	0.0	0.0
111	0.0	0.0
112	0.0	0.0
113	0.0	0.0
114	0.0	0.0
115	0.0	0.0
116	0.0	0.0
117	0.0	0.0
118	0.0	0.0
119	0.0	0.0
120	0.0	0.0
121	0.0	0.0
122	0.0	0.0
123	0.0	0.0
124	0.0	0.0
125	0.0	0.0
126	0.0	0.0
127	0.0	0.0
128	0.0	0.0
129	1.77	(1)
130	1.60	(1)
131	0.0	0.0
132	0.0	0.0
133	2.14	9.28
134	3.08	0.0
135	0.0	0.0
136	0.0	0.0
137	0.0	0.0
138	0.0	0.0
139	0.0	0.0
140	0.0	0.0
141	0.0	0.0
142	0.0	0.0
143	0.0	0.0
144	0.0	0.0
145	0.0	0.0
146	0.0	0.0
147	0.0	5.51
148	0.0	11.34
149	0.0	0.0
150	0.0	0.0
151	0.0	0.0
152	0.0	0.0
153	0.0	0.0
154	0.0	0.0
155	0.0	0.0
156	0.0	0.0
157	0.0	0.0
158	0.0	0.21
159	0.0	30.00
160	0.0	26.78
161	0.0	20.00
162	0.0	20.00
163	0.0	4.12
164	0.0	0.0
165	0.0	0.0
166	0.0	0.0
167	0.0	0.0
168	0.0	0.0
169	0.0	0.0
170	0.0	0.0
171	0.0	0.0
172	0.0	0.0
173	0.0	0.0
174	0.0	0.0
175	0.0	0.0
176	0.0	0.0
177	0.0	0.0
178	0.0	0.0
179	0.0	0.0
180	0.0	0.0
181	0.0	0.0
182	0.0	0.0
183	0.0	0.0
184	0.0	20.00
185	0.0	20.00
186	0.0	11.73
187	0.0	0.0
188	0.0	0.0
189	0.0	0.0
190	0.0	0.0
191	0.0	0.0
192	0.0	0.0
193	0.0	0.0
194	0.0	0.0
195	0.0	0.0
196	0.0	0.0
197	0.0	0.0
198	0.0	0.0
199	0.0	0.0
200	0.0	0.0
201	0.0	0.0
202	0.0	0.0
203	0.0	0.0
204	0.0	0.0
205	0.0	0.0

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
206	0.0	0.0
207	0.0	0.0
208	0.0	0.0
209	0.0	0.0
210	0.0	0.0
211	0.0	0.0
212	0.0	0.0
213	0.0	0.0
214	0.0	73.41
215	0.0	90.00
216	31.30	81.30
217	41.15	90.00
218	44.00	90.00
219	46.41	90.00
220	51.04	82.41
221	66.66	90.00
222	75.03	90.00
223	89.85	90.00
224	96.78	93.88
225	96.91	50.94
226	94.60	17.02
227	99.16	28.60
228	100.00	39.83
229	100.00	30.00
230	100.00	26.69
231	100.00	20.00
232	100.71	20.00
233	100.00	36.06
234	96.16	40.00
235	95.77	30.00
236	94.55	32.75
237	96.86	35.68
238	99.18	30.00
239	100.00	44.93
240	101.81	50.00
241	86.54	(1)
242	63.56	(1)
243	56.00	(1)
244	46.00	(1)
245	41.86	45.18
246	38.31	78.47
247	35.98	80.00
248	31.03	80.00
249	25.36	80.00
250	23.05	60.97
251	18.20	27.34
252	12.84	43.71
253	10.10	68.95
254	3.79	68.95
255	1.48	44.28
256	0.0	0.0
257	0.0	0.0
258	0.0	0.0
259	0.0	0.0
260	0.0	0.0
261	0.0	0.0
262	0.0	0.0
263	0.0	24.97
264	0.0	17.16
265	0.0	6.20
266	0.0	10.00
267	0.0	10.00
268	0.0	0.0
269	0.0	0.0
270	0.0	0.0
271	0.0	0.0
272	0.0	0.0
273	0.0	0.0
274	0.0	0.0
275	0.0	0.0
276	0.0	0.0
277	0.0	0.0
278	0.0	0.0
279	0.0	0.0
280	0.0	0.0
281	0.0	0.0
282	0.0	0.0
283	0.0	0.0
284	0.0	0.0
285	0.0	0.0
286	0.0	0.0
287	0.0	0.0
288	0.0	0.0
289	0.0	0.0
290	0.0	0.0
291	0.0	0.0
292	0.0	0.0
293	0.0	0.0
294	0.0	0.0
295	0.0	0.0
296	0.0	0.0
297	0.0	0.0
298	0.0	0.0
299	0.0	0.0
300	0.0	0.0
301	0.0	0.0
302	0.0	0.0
303	0.0	0.0
304	0.0	0.0
305	0.0	0.0
306	0.0	0.0
307	0.0	0.0
308	0.0	0.0
309	0.0	0.0
310	0.0	0.0
311	0.0	0.0
312	0.0	0.0
313	0.0	0.0
314	0.0	0.0
315	0.0	0.0
316	0.0	0.0
317	0.0	0.0
318	0.0	0.0
319	0.0	0.0
320	0.0	0.0
321	0.0	15.55
322	0.0	20.00
323	24.18	19.06
324	23.00	10.00
325	11.56	1.86
326	6.87	(1)
327	6.00	(1)
328	0.72	(1)
329	0.0	0.0
330	0.0	0.0
331	0.0	0.0
332	0.0	0.0
333	0.0	0.0
334	0.0	0.0
335	0.0	0.0
336	0.0	0.0
337	0.0	0.0
338	0.0	0.0
339	0.0	0.0
340	0.0	0.0
341	0.0	0.0
342	0.0	0.0
343	0.0	0.0
344	0.0	0.0
345	0.0	0.0
346	0.0	0.0
347	0.0	0.0
348	0.0	0.0
349	0.0	0.0
350	0.0	0.0
351	0.0	0.0
352	0.0	0.0
353	0.0	0.0
354	0.0	0.0
355	0.0	0.0
356	0.0	0.0
357	0.0	0.0
358	0.0	0.0
359	0.0	0.0
360	0.0	0.0
361	0.0	0.0
362	0.0	0.0
363	0.0	0.0
364	0.0	0.0
365	0.0	0.0
366	0.0	0.0
367	0.0	0.0
368	0.0	0.0
369	0.0	0.0
370	0.0	0.0
371	0.0	0.0
372	0.0	0.0
373	0.0	0.0
374	0.0	0.0
375	0.0	0.0
376	0.0	0.0
377	0.0	29.59
378	−1.50	87.46
379	8.88	100.00
380	46.04	100.00
381	76.89	100.00
382	80.00	100.00
383	82.14	94.64
384	85.39	83.07
385	87.70	88.51
386	92.00	79.83
387	92.00	61.66
388	94.58	66.77
389	102.88	60.00
390	106.00	72.76
391	109.18	8.43
392	111.91	(1)
393	82.00	(1)
394	79.33	(1)
395	71.15	(1)
396	68.84	(1)
397	76.35	49.17
398	82.00	70.00
399	80.65	69.46
400	92.85	60.00
401	97.48	60.00
402	98.95	60.00
403	100.74	60.00
404	103.68	43.17
405	104.00	10.04
406	80.62	20.00
407	83.37	20.00
408	81.06	15.29
409	80.00	10.00
410	76.86	(1)
411	74.11	(1)
412	71.60	(1)
413	70.58	(1)
414	78.00	(1)
415	80.29	1.45
416	80.54	17.30
417	78.23	11.13
418	78.45	19.55
419	84.36	24.16
420	72.16	80.00
421	79.10	74.83
422	90.09	16.04
423	74.04	(1)
424	68.02	(1)
425	68.53	(1)
426	59.39	(1)
427	63.54	(1)
428	70.00	2.38
429	73.10	17.76
430	72.13	(1)
431	67.27	(1)
432	38.03	(1)
433	20.75	(1)
434	11.49	(1)
435	−2.09	0.0
436	−0.73	0.0
437	8.57	60.00
438	30.55	61.93
439	67.10	63.09
440	86.03	39.85
441	89.33	30.00
442	91.64	30.00
443	97.86	10.40
444	97.73	1.37
445	96.00	10.00
446	96.00	0.96
447	96.00	(1)
448	85.27	28.34
449	87.54	30.76
450	86.16	29.18
451	88.00	20.00
452	87.21	20.00
453	86.00	20.00
454	87.42	20.00
455	88.00	11.32
456	77.84	(1)
457	72.00	(1)
458	71.32	(1)
459	70.00	0.04
460	70.00	(1)
461	74.88	(1)
462	74.06	(1)
463	67.74	(1)
464	66.00	(1)
465	64.23	(1)
466	62.00	(1)
467	55.94	(1)
468	54.00	(1)
469	66.43	(1)
470	75.21	70.00
471	86.00	54.53
472	86.00	24.56
473	88.81	(1)
474	90.00	(1)
475	105.48	(1)
476	74.00	(1)
477	73.34	(1)
478	71.02	10.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
479	76.46	29.36
480	81.61	40.00
481	78.16	30.39
482	74.13	26.46
483	90.00	0.0
484	90.87	0.0
485	92.00	(1)
486	93.50	(1)
487	94.00	(1)
488	94.13	(1)
489	88.96	(1)
490	63.25	(1)
491	62.00	(1)
492	49.54	45.37
493	52.49	86.99
494	64.00	90.00
495	64.99	90.00
496	17.93	93.22
497	78.87	95.21
498	82.00	83.64
499	86.76	80.00
500	93.71	80.00
501	94.87	80.00
502	103.60	80.00
503	101.23	41.89
504	95.48	24.85
505	98.00	50.00
506	99.79	50.00
507	106.21	46.82
508	110.84	(1)
509	98.55	(1)
510	70.95	(1)
511	67.27	(1)
512	60.96	(1)
513	48.03	(1)
514	52.31	(1)
515	54.00	(1)
516	65.27	(1)
517	78.00	(1)
518	57.61	(1)
519	42.58	(1)
520	38.81	(1)
521	22.37	(1)
522	3.52	(1)
523	0.0	0.0
524	−1.46	36.39
525	−0.23	5.75
526	0.0	0.0
527	0.0	0.0
528	0.0	0.0
529	0.0	0.0
530	0.0	0.0
531	0.0	0.0
532	0.0	0.0
533	0.0	0.0
534	0.0	0.0
535	0.0	0.0
536	0.0	0.0
537	0.0	0.0
538	0.0	0.0
539	0.0	0.0
540	0.0	0.0
541	0.0	0.0
542	0.0	0.0
543	0.0	0.0
544	0.0	(1)
545	0.0	0.0
546	−0.75	0.0
547	−0.58	0.0
548	4.00	(1)
549	0.68	(1)
550	0.0	0.0
551	0.0	0.0
552	0.0	2.60
553	0.0	20.00
554	0.0	20.00
555	0.0	7.96
556	0.0	0.0
557	0.0	0.0
558	0.0	78.53
559	1.85	60.00
560	11.10	63.88
561	16.00	70.00
562	30.05	70.00
563	42.88	70.00
564	56.10	70.00
565	63.39	66.52
566	70.66	59.94
567	72.98	80.00
568	77.87	86.46
569	88.03	90.00
570	90.00	90.00
571	92.23	100.00
572	94.00	100.00
573	94.86	100.00
574	96.00	100.00
575	97.49	100.00
576	108.84	100.00
577	110.00	83.92
578	104.77	(1)
579	87.50	(1)
580	90.00	0.0
581	91.38	(1)
582	81.84	(1)
583	65.99	(1)
584	63.68	(1)
585	60.73	(1)
586	57.05	(1)
587	53.47	(1)
588	50.42	(1)
589	44.31	(1)
590	37.58	37.91
591	33.48	20.00
592	31.16	20.00
593	28.85	20.00
594	22.13	20.00
595	9.31	(1)
596	0.0	0.0
597	0.0	0.0
598	0.0	0.0
599	0.0	0.0
600	0.0	0.0
601	0.0	0.0
602	0.0	0.0
603	0.0	0.0
604	0.0	0.0
605	0.0	0.0
606	2.52	6.30
607	10.30	17.87
608	13.89	20.00
609	20.20	20.00
610	24.07	22.59
611	33.33	17.50
612	40.30	(1)
613	47.85	(1)
614	66.00	7.78
615	68.00	10.93
616	67.59	32.04
617	66.00	40.00
618	67.04	40.00
619	68.00	40.00
620	68.00	48.33
621	75.93	99.53
622	78.00	100.00
623	78.00	100.00
624	77.07	100.00
625	76.00	100.00
626	76.00	100.00
627	76.00	100.00
628	75.63	100.00
629	73.00	97.50
630	76.81	90.00
631	80.26	90.00
632	83.44	90.00
633	84.00	98.79
634	84.00	100.00
635	83.61	100.00
636	82.00	100.00
637	83.02	94.91
638	86.67	90.00
639	89.65	90.00
640	90.00	99.81
641	89.45	100.00
642	86.00	100.00
643	86.00	95.47
644	87.22	90.00
645	88.00	90.00
646	88.00	80.74
647	88.00	79.17
648	88.00	77.21
649	88.00	100.00
650	88.00	94.45
651	88.00	90.00
652	88.00	90.00
653	90.00	90.00
654	89.63	90.00
655	88.68	90.00
656	90.00	90.00
657	90.00	90.00
658	91.63	81.86
659	92.00	80.00
660	90.00	81.29
661	89.43	92.86
662	87.11	100.00
663	86.00	100.00
664	86.00	100.00
665	89.66	100.00
666	90.00	99.27
667	90.46	90.00
668	92.76	90.00
669	95.09	90.00
670	100.22	82.97
671	102.00	80.00
672	102.00	70.18
673	102.00	80.00
674	97.34	50.07
675	87.02	(1)
676	86.00	(1)
677	73.12	22.19
678	75.77	39.62
679	75.76	48.80
680	75.11	37.23
681	78.00	34.34
682	80.37	40.00
683	77.51	47.49
684	81.44	50.00
685	82.13	39.36
686	84.00	27.79
687	84.00	16.21
688	84.00	15.36
689	85.39	26.93
690	86.00	30.00
691	86.00	30.08
692	85.67	40.00
693	84.65	40.00
694	86.00	35.20
695	87.28	30.00
696	88.00	22.05
697	86.09	(1)
698	83.78	(1)
699	81.47	(1)
700	81.70	(1)
701	85.16	(1)
702	84.52	(1)
703	82.21	(1)
704	79.89	(1)
705	77.58	(1)
706	76.00	6.31
707	79.16	0.0
708	75.16	27.36
709	72.00	40.00
710	72.00	40.00
711	74.00	38.44
712	74.00	30.00
713	74.00	30.00
714	74.00	36.28
715	72.43	47.86
716	68.23	59.43
717	73.80	50.00
718	72.52	50.00
719	74.00	45.85
720	72.85	57.18
721	76.36	62.70
722	81.55	60.00
723	80.18	60.00
724	83.60	60.00
725	83.44	56.40
726	86.00	50.00
727	87.35	50.00
728	86.34	50.00
729	86.00	40.11
730	86.29	61.47
731	86.78	63.92
732	86.92	50.00
733	86.76	50.00
734	87.55	42.24
735	88.00	49.34
736	86.00	50.91
737	86.00	67.45
738	86.00	81.88
739	87.13	70.00
740	89.44	77.21
741	91.76	88.78
742	90.07	89.65
743	92.00	80.00
744	92.70	80.00
745	94.00	80.00
746	94.00	80.00
747	94.00	80.00
748	94.00	80.00
749	94.00	81.37
750	94.59	87.05
751	96.00	57.40

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
752	96.00	42.19
753	96.00	42.33
754	96.00	40.00
755	96.00	38.37
756	96.00	12.83
757	96.00	(1)
758	96.00	(1)
759	96.00	(1)
760	97.74	7.37
761	100.05	19.74
762	102.00	11.83
763	102.00	26.81
764	103.00	49.96
765	104.00	60.00
766	102.37	60.00
767	103.94	60.00
768	104.00	40.00
769	104.00	25.75
770	103.12	(1)
771	100.80	(1)
772	100.00	(1)
773	101.83	44.86
774	102.00	36.40
775	102.00	(1)
776	102.00	(1)
777	100.91	(1)
778	101.40	(1)
779	100.26	(1)
780	97.97	(1)
781	96.00	(1)
782	96.00	10.00
783	96.00	0.23
784	96.60	(1)
785	96.00	(1)
786	94.08	(1)
787	78.00	(1)
788	77.45	(1)
789	71.67	26.96
790	67.18	60.00
791	66.50	67.48
792	71.43	90.00
793	74.13	90.00
794	75.56	92.20
795	74.75	100.00
796	77.07	94.65
797	79.36	63.08
798	80.00	71.51
799	80.01	69.93
800	82.33	58.36
801	84.00	50.00
802	84.00	59.58
803	84.00	76.36
804	84.00	80.00
805	84.00	70.49
806	82.00	80.00
807	81.47	82.66
808	80.00	90.00
809	77.68	90.00
810	74.52	75.24
811	77.58	78.96
812	81.89	80.00
813	80.42	80.00
814	82.00	83.68
815	83.05	79.50
816	84.00	70.00
817	84.00	61.60
818	84.00	50.03
819	86.00	60.00
820	86.00	60.00
821	86.00	69.39
822	86.51	73.73
823	86.43	70.00
824	88.00	70.00
825	94.00	70.99
826	94.51	80.00
827	95.17	80.00
828	95.14	80.00
829	94.54	80.00
830	94.00	80.00
831	94.00	77.89
832	94.00	31.99
833	94.00	43.57
834	94.00	60.28
835	94.00	63.29
836	94.00	76.57
837	94.00	89.86
838	94.29	90.00
839	97.60	87.00
840	102.91	80.00
841	104.00	73.85
842	104.00	62.28
843	104.00	69.29
844	106.00	70.00
845	106.00	62.70
846	106.00	40.00
847	104.88	40.00
848	104.00	32.85
849	104.00	30.00
850	104.00	0.30
851	103.63	11.87
852	100.62	13.12
853	98.00	5.01
854	96.66	10.00
855	96.00	(1)
856	96.00	(1)
857	96.00	(1)
858	95.43	(1)
859	94.00	(1)
860	94.00	(1)
861	95.52	5.18
862	97.83	(1)
863	98.00	(1)
864	98.00	(1)
865	97.22	(1)
866	96.00	6.35
867	96.00	12.98
868	96.00	10.00
869	95.53	10.00
870	92.00	10.00
871	92.00	10.00
872	92.98	14.89
873	94.00	13.54
874	90.79	42.12
875	88.08	40.40
876	86.23	30.00
877	88.00	32.75
878	87.14	44.32
879	84.82	50.00
880	82.51	50.00
881	82.00	50.00
882	82.12	40.00
883	83.13	35.64
884	80.00	20.00
885	84.26	51.95
886	86.62	66.21
887	84.31	60.00
888	81.99	9.96
889	79.35	1.61
890	75.36	19.56
891	73.05	40.00
892	70.73	8.35
893	68.42	(1)
894	47.15	8.95
895	35.79	10.00
896	32.95	7.38
897	29.16	(1)
898	16.47	(1)
899	2.13	(1)
900	0.0	0.0
901	0.0	0.0
902	0.0	0.0
903	0.0	0.0
904	0.0	0.0
905	0.0	0.0
906	0.0	0.0
907	0.0	0.0
908	0.0	0.0
909	0.0	0.0
910	0.0	0.0
911	0.0	0.0
912	0.0	0.0
913	0.0	0.0
914	0.0	0.0
915	0.0	0.0
916	0.0	0.0
917	0.0	0.0
918	0.0	0.0
919	0.0	0.0
920	0.0	0.0
921	0.0	0.0
922	0.0	0.0
923	0.0	0.0
924	0.0	0.0
925	0.0	0.0
926	0.0	0.0
927	0.0	3.67
928	0.0	47.69
929	3.11	59.41
930	9.09	84.54
931	15.62	80.00
932	33.49	80.00
933	37.93	79.29
934	31.20	28.25
935	21.99	26.67
936	20.00	15.10
937	22.23	16.47
938	19.61	28.05
939	20.00	20.38
940	18.33	(1)
941	6.55	(1)
942	15.82	(1)
943	23.63	(1)
944	17.51	(1)
945	14.19	62.52
946	16.84	69.36
947	27.77	60.00
948	37.03	63.79
949	47.36	75.36
950	54.77	80.00
951	57.70	80.00
952	54.03	79.92
953	58.00	65.03
954	58.65	43.23
955	62.88	50.00
956	69.83	50.00
957	72.00	42.05
958	75.81	40.00
959	84.22	42.20
960	83.88	41.28
961	80.55	(1)
962	80.51	(1)
963	78.00	(1)
964	79.79	(1)
965	80.33	30.54
966	85.58	42.12
967	81.78	50.00
968	78.00	50.00
969	80.74	43.16
970	92.10	73.65
971	88.01	(1)
972	84.00	(1)
973	84.00	(1)
974	81.17	(1)
975	70.46	(1)
976	66.00	13.57
977	62.23	29.43
978	64.00	20.00
979	63.46	17.42
980	60.34	10.00
981	56.85	10.00
982	56.00	(1)
983	52.45	(1)
984	39.91	10.00
985	36.38	10.00
986	30.00	10.00
987	27.93	10.00
988	26.00	16.74
989	27.66	3.36
990	28.00	(1)
991	27.41	(1)
992	20.96	(1)
993	12.15	(1)
994	3.81	(1)
995	0.0	0.0
996	0.0	0.0
977	0.0	0.91
998	0.0	7.52
999	0.0	0.0
1,000	0.0	0.0
1,001	0.0	0.0
1,002	0.0	0.0
1,003	0.0	0.0
1,004	0.0	0.0
1,005	0.0	0.0
1,006	0.0	0.0
1,007	0.0	0.0
1,008	0.0	0.0
1,009	0.0	0.0
1,010	0.0	0.0
1,011	0.0	0.0
1,012	0.0	0.0
1,013	0.0	0.0
1,014	0.0	0.0
1,015	0.0	0.0
1,016	0.0	0.0
1,017	0.0	0.0
1,018	0.0	0.0
1,019	0.0	0.0
1,020	0.0	0.0
1,021	0.0	0.0
1,022	0.0	0.0
1,023	0.0	0.0
1,024	0.0	0.0

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
1,025	0.0	0.0
1,026	0.0	0.0
1,027	0.0	0.0
1,028	0.0	0.0
1,029	0.0	0.0
1,030	0.0	0.0
1,031	1.77	(1)
1 032	1.60	(1)
1,033	0.0	0.0
1,034	0.0	0.0
1,035	2.14	9.26
1,036	3.08	0.0
1,037	0.0	0.0
1,038	0.0	0.0
1,039	0.0	0.0
1,040	0.0	0.0
1,041	0.0	0.0
1,042	0.0	0.0
1,043	0.0	0.0
1,044	0.0	0.0
1,045	0.0	0.0
1,046	0.0	0.0
1,047	0.0	0.0
1,048	0.0	0.0
1,049	0.0	5.51
1,050	0.0	11.34
1,051	0.0	0.0
1,052	0.0	0.0
1,053	0.0	0.0
1,054	0.0	0.0
1,055	0.0	0.0
1,056	0.0	0.0
1,057	0.0	0.0
1,058	0.0	0.0
1,059	0.0	0.0
1,060	0.0	0.21
1,061	0.0	30.00
1,062	0.0	26.78
1,063	0.0	20.00
1,064	0.0	20.00
1,065	0.0	4.12
1,066	0.0	0.0
1,067	0.0	0.0
1,068	0.0	0.0
1,069	0.0	0.0
1,070	0.0	0.0
1,071	0.0	0.0
1,072	0.0	0.0
1,073	0.0	0.0
1,074	0.0	0.0
1,075	0.0	0.0
1,076	0.0	0.0
1,077	0.0	0.0
1,078	0.0	0.0
1,079	0.0	0.0
1,080	0.0	0.0
1,081	0.0	0.0
1,082	0.0	0.0
1,083	0.0	0.0
1,084	0.0	0.0
1,085	0.0	0.0
1,086	0.0	20.00
1,087	0.0	20.00
1,088	0.0	11.73
1,089	0.0	0.0
1,090	0.0	0.0
1,091	0.0	0.0
1,092	0.0	0.0
1,093	0.0	0.0
1,094	0.0	0.0
1,095	0.0	0.0
1,096	0.0	0.0
1,097	0.0	0.0
1,098	0.0	0.0
1,099	0.0	0.0
1,100	0.0	0.0
1,101	0.0	0.0
1,102	0.0	0.0
1,103	0.0	0.0
1,104	0.0	0.0
1,105	0.0	0.0
1,106	0.0	0.0
1,107	0.0	0.0
1,108	0.0	0.0
1,109	0.0	0.0
1,110	0.0	0.0
1,111	0.0	0.0
1,112	0.0	0.0
1,113	0.0	0.0
1,114	0.0	0.0
1,115	0.0	0.0
1,116	0.0	73.41
1,117	0.0	90.00
1,118	31.30	81.30
1,119	41.15	90.00
1,120	44.00	90.00
1,121	46.41	90.00
1,122	51.04	82.41
1,123	66.68	80.00
1,124	75.03	90.00
1,125	89.85	90.00
1,126	96.78	93.88
1,127	96.91	50.94
1,128	94.60	17.02
1,129	99.16	28.60
1,130	100.00	39.83
1,131	100.00	30.00
1,132	100.00	26.69
1,133	100.98	20.00
1,134	100.71	20.00
1,135	100.00	36.06
1,136	96.16	40.00
1,137	95.77	30.00
1,138	94.55	32.75
1,139	96.86	35.68
1,140	99.18	30.00
1,141	100.00	44.93
1,142	101.81	50.00
1,143	86.54	(1)
1,144	63.56	(1)
1,145	56.00	(1)
1,146	46.00	(1)
1,147	41.86	45.18
1,148	38.31	78.47
1,149	35.98	80.00
1,150	31.03	80.00
1,151	25.36	80.00
1,152	23.05	60.97
1,153	18.20	27.34
1,154	12.84	43.71
1,155	10.10	68.95
1,156	3.79	68.95
1,157	1.48	44.26
1,158	0.0	0.0
1,159	0.0	0.0
1,160	0.0	0.0
1,161	0.0	0.0
1,162	0.0	0.0
1,163	0.0	0.0
1,164	0.0	0.0
1,165	0.0	24.97
1,166	0.0	17.16
1,167	0.0	6.20
1,168	0.0	10.00
1,169	0.0	10.00
1,170	0.0	0.0
1,171	0.0	0.0
1,172	0.0	0.0
1,173	0.0	0.0
1,174	0.0	0.0
1,175	0.0	0.0
1,176	0.0	0.0
1,177	0.0	0.0
1,178	0.0	0.0
1,179	0.0	0.0
1,180	0.0	0.0
1,181	0.0	0.0
1,182	0.0	0.0
1,183	0.0	0.0
1,184	0.0	0.0
1,185	0.0	0.0
1,186	0.0	0.0
1,187	0.0	0.0
1,188	0.0	0.0
1,189	0.0	0.0
1,190	0.0	0.0
1,191	0.0	0.0
1,192	0.0	0.0
1,193	0.0	0.0
1,194	0.0	0.0
1,195	0.0	0.0
1,196	0.0	0.0
1,197	0.0	0.0
1,198	0.0	0.0
1,199	0.0	0.0

[1] Closed rack.

(3) Optional EPA Engine Dynamometer Schedule for Heavy-Duty Gasoline-Fueled Engines.

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
1	0.0	0.0
2	0.0	0.0
3	0.0	0.0
4	0.0	0.0
5	0.0	0.0
6	0.0	0.0
7	0.0	0.0
8	0.0	0.0
9	0.0	0.0
10	0.0	0.0
11	0.0	0.0
12	0.0	0.0
13	0.0	0.0
14	0.0	0.0
15	0.0	0.0
16	0.0	0.0
17	0.0	0.0
18	0.0	0.0
19	0.0	0.0
20	0.0	0.0
21	0.0	0.0
22	0.0	0.0
23	0.0	0.0
24	0.0	0.0
25	−1.76	44.40
26	0.0	85.35
27	4.25	100.00
28	27.47	100.00
29	42.96	100.00
30	45.79	100.00
31	48.11	99.46
32	50.42	90.00
33	52.74	75.23
34	54.00	50.00
35	44.42	8.96
36	45.05	−10.00
37	46.00	9.99
38	37.89	−10.00
39	31.61	5.68
40	22.94	35.29
41	24.00	4.87
42	20.86	−10.00
43	12.45	−10.00
44	6.00	−10.00
45	6.52	−10.00
46	7.17	−10.00
47	2.56	−10.00
48	0.0	0.0
49	0.0	0.0
50	0.0	0.0
51	0.0	10.11
52	4.32	46.40
53	8.90	45.17
54	1.95	50.00
55	3.33	41.68
56	4.00	89.46
57	13.76	55.60
58	26.43	26.96
59	33.85	6.16
60	36.00	−10.00
61	34.45	−10.00
62	34.00	−10.00
63	35.64	−10.00
64	32.99	27.39
65	36.00	80.00
66	41.63	74.37
67	60.41	26.76
68	48.44	−10.00
69	43.86	−10.00
70	40.39	−10.00
71	38.50	4.01
72	35.05	30.00
73	40.66	16.70
74	43.64	26.45
75	45.96	−10.00
76	47.10	−10.00
77	49.29	−10.00
78	37.10	−10.00
79	36.00	−10.00
80	34.47	−10.00
81	32.15	−10.00
82	31.67	−10.00
83	28.48	13.89
84	32.38	90.00
85	36.00	90.00
86	41.89	90.00
87	45.74	90.00
88	49.95	80.00
89	49.10	80.00
90	50.59	62.97
91	45.99	34.98

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
92	42.76	7.23
93	35.12	−10.00
94	32.06	67.92
95	35.53	62.55
96	46.57	68.60
97	49.77	46.85
98	52.00	60.00
99	58.06	60.00
100	63.66	23.42
101	64.14	17.84
102	59.58	3.76
103	36.00	42.26
104	39.09	30.00
105	40.00	30.00
106	34.85	47.18
107	32.03	10.33
108	34.00	33.48
109	34.00	50.00
110	33.02	20.69
111	25.54	−10.00
112	15.57	−10.00
113	14.00	−10.00
114	14.47	27.64
115	18.00	4.49
116	17.13	−10.60
117	16.00	−10.00
118	10.02	−10.00
119	9.81	−10.00
120	5.88	−10.00
121	4.00	−10.00
122	4.00	−10.00
123	2.93	−10.00
124	0.62	−10.00
125	0.0	0.0
126	0.0	0.0
127	0.0	0.0
128	0.0	0.0
129	0.0	0.0
130	0.0	10.00
131	0.0	10.00
132	0.0	29.02
133	0.0	27.83
134	0.0	7.34
135	0.0	0.0
136	0.0	0.0
137	0.0	0.0
138	0.0	0.0
139	0.0	0.0
140	0.0	0.0
141	0.0	0.0
142	0.0	0.0
143	0.0	0.0
144	0.0	0.0
145	0.0	0.0
146	2.00	0.0
147	1.38	0.0
148	0.0	0.0
149	0.0	6.27
150	0.0	2.16
151	0.0	0.0
152	0.0	0.0
153	0.0	0.0
154	0.83	−10.00
155	2.00	−10.00
156	0.54	−10.00
157	0.0	0.0
158	0.0	0.0
159	0.0	0.0
160	0.0	0.0
161	0.0	0.0
162	0.0	0.0
163	0.0	0.0
164	0.0	0.0
165	0.0	0.0
166	0.0	0.0
167	0.0	22.01
168	1.23	72.29
169	6.63	80.00
170	17.29	89.29
171	22.17	90.00
172	24.00	82.70
173	24.00	31.96
174	24.00	−10.00
175	22.57	−10.00
176	22.00	−10.00
177	13.88	−10.00
178	10.00	−10.00
179	9.31	−10.00
180	3.99	−10.00
181	0.0	0.0
182	0.0	0.0
183	0.0	0.0
184	0.0	0.0
185	0.0	0.0
186	0.0	0.0
187	0.0	0.0
188	0.0	0.0
189	0.0	0.0
190	0.0	0.0
191	0.0	0.0
192	0.0	0.0
193	0.0	0.0
194	0.0	0.0
195	0.0	0.0
196	0.0	0.0
197	0.0	0.0
198	0.0	0.0
199	0.0	0.0
200	0.0	0.0
201	0.0	0.0
202	0.0	0.0
203	0.0	0.0
204	−2.52	8.30
205	−4.22	15.28
206	0.0	10.00
207	0.0	10.00
208	0.0	10.00
209	0.0	75.93
210	0.0	32.22
211	1.67	35.00
212	15.46	29.82
213	25.46	−10.00
214	24.22	−10.00
215	23.44	−10.00
216	12.41	80.00
217	8.94	83.61
218	7.26	84.82
219	16.70	80.00
220	24.67	63.33
221	0.24	79.81
222	0.0	8.52
223	0.0	0.0
224	0.0	0.0
225	0.0	0.0
226	0.0	0.0
227	0.0	0.0
228	0.0	0.0
229	0.0	0.0
230	0.0	0.0
231	0.0	0.0
232	0.0	0.0
233	0.0	17.59
234	0.0	19.63
235	0.0	10.00
236	0.0	10.00
237	0.0	10.00
238	0.0	3.34
239	0.0	0.0
240	0.0	0.0
241	0.0	0.0
242	0.0	0.0
243	0.0	0.0
244	0.0	0.0
245	0.0	0.0
246	0.0	0.0
247	0.0	0.0
248	0.0	0.0
249	0.0	0.0
250	0.0	0.0
251	0.0	0.0
252	0.0	0.0
253	0.0	0.0
254	0.0	0.0
255	0.0	0.0
256	0.0	0.0
257	0.0	0.0
258	0.0	0.0
259	0.0	0.0
260	0.0	0.0
261	0.0	0.0
262	0.0	0.0
263	0.0	0.0
264	0.0	0.0
265	0.0	0.0
266	0.0	0.0
267	0.0	0.0
268	0.0	0.0
269	0.0	0.0
270	0.0	0.0
271	0.0	0.0
272	0.0	0.0
273	0.0	0.0
274	0.0	0.0
275	0.0	0.0
276	0.0	0.0
277	0.0	0.0
278	0.0	0.0
279	0.0	0.0
280	0.0	0.0
281	0.0	4.17
282	1.15	10.00
283	2.00	10.00
284	0.22	10.00
285	0.0	0.0
286	0.0	0.0
287	0.0	0.0
288	0.0	0.0
289	0.0	0.0
290	0.0	0.0
291	0.0	0.0
292	0.0	0.0
293	0.0	0.0
294	0.0	0.0
295	0.0	0.0
296	0.0	0.0
297	0.0	0.0
298	0.0	0.0
299	0.0	0.0
300	0.0	4.07
301	0.0	10.00
302	0.0	17.22
303	0.0	20.00
304	0.0	20.37
305	2.33	31.94
306	16.22	36.46
307	24.00	24.91
308	24.00	13.34
309	19.08	10.00
310	18.00	−10.00
311	17.17	−10.00
312	9.04	−10.00
313	1.09	−10.00
314	0.0	0.0
315	0.0	0.0
316	0.0	0.0
317	0.0	0.0
318	0.0	0.0
319	0.0	0.0
320	0.0	0.0
321	0.0	0.0
322	0.0	0.0
323	0.0	0.82
324	0.37	41.08
325	2.68	90.00
326	6.00	94.99
327	11.94	100.00
328	15.63	100.00
329	41.26	90.28
330	46.26	90.00
331	44.56	67.08
332	36.00	1.12
333	27.58	50.12
334	23.52	90.00
335	24.00	90.00
336	26.29	70.00
337	30.00	65.38
338	30.00	34.47
339	30.00	10.00
340	30.00	10.00
341	30.00	10.00
342	30.18	60.00
343	40.00	58.25
344	40.67	50.00
345	41.02	50.00
346	40.00	50.00
347	41.61	50.00
348	42.00	50.00
349	46.00	50.00
350	48.22	50.00
351	59.21	58.89
352	67.18	70.00
353	71.00	70.00
354	72.00	70.00
355	72.13	68.08
356	74.89	28.94
357	68.91	−10.00
358	49.71	−10.00
359	41.84	−10.00
360	38.30	−10.00
361	35.93	−10.00
362	28.00	−10.00
363	23.48	−10.00
364	10.16	−10.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
365	4.72	−10.00
366	0.82	5.90
367	−9.53	19.53
368	2.20	45.60
369	20.53	7.33
370	21.15	0.0
371	17.67	−10.00
372	13.04	−10.00
373	8.41	79.70
374	10.33	100.00
375	17.27	100.00
376	22.00	100.00
377	25.16	100.00
378	29.37	100.00
379	36.73	66.35
380	40.00	−10.00
381	23.50	−10.00
382	9.37	−10.00
383	8.00	−10.00
384	6.74	−10.00
385	2.86	−10.00
386	0.11	−10.00
387	0.0	0.0
388	0.0	0.0
389	0.0	0.0
390	0.0	0.0
391	0.0	0.0
392	0.0	0.0
393	0.0	0.0
394	0.0	0.0
395	0.0	0.0
396	0.0	0.0
397	0.0	0.0
398	0.0	0.0
399	0.0	0.0
400	0.0	0.0
401	0.0	0.0
402	0.0	0.0
403	0.0	0.0
404	0.0	0.0
405	0.0	0.0
406	0.0	0.0
407	0.0	0.0
408	0.0	0.0
409	0.0	0.0
410	0.0	0.0
411	0.0	0.0
412	0.0	0.0
413	0.0	0.0
414	0.0	0.0
415	0.0	0.0
416	0.0	0.0
417	0.0	0.0
418	0.0	0.0
419	2.27	20.00
420	2.82	14.11
421	0.0	0.0
422	0.0	0.0
423	0.0	0.0
424	0.0	0.0
425	0.0	0.0
426	0.0	0.0
427	0.0	0.0
428	0.0	0.0
429	0.0	0.0
430	0.0	0.0
431	0.26	0.78
432	16.60	31.83
433	45.32	29.78
434	43.00	10.00
435	40.69	10.00
436	35.12	10.00
437	28.18	19.70
438	28.26	47.45
439	30.00	30.00
440	30.00	30.00
441	30.00	30.00
442	34.54	30.00
443	38.00	30.00
444	36.43	30.00
445	43.84	30.00
446	50.00	30.00
447	50.00	24.56
448	50.00	20.00
449	50.00	−10.00
450	37.97	−10.00
451	35.30	−10.00
452	30.66	−10.00
453	27.02	−10.00
454	26.00	−10.00
455	26.00	−10.00
456	20.24	−10.00
457	14.00	−10.00
458	13.45	18.27
459	9.40	52.99
460	10.72	81.81
461	15.50	97.48
462	19.62	100.00
463	20.25	100.00
464	25.76	100.00
465	35.02	100.00
466	42.14	94.65
467	44.00	90.00
468	45.70	90.00
469	51.99	60.00
470	50.00	60.00
471	51.29	63.22
472	54.96	70.00
473	56.00	70.00
474	62.35	38.25
475	71.61	30.00
476	76.22	50.00
477	78.00	50.00
478	78.00	41.53
479	55.93	12.58
480	38.52	0.0
481	34.42	71.65
482	36.11	79.47
483	38.84	67.90
484	42.74	60.00
485	44.00	54.75
486	49.46	36.35
487	52.00	30.00
488	32.05	−10.00
489	25.69	0.0
490	24.00	0.0
491	24.00	−10.00
492	20.24	−10.00
493	10.16	68.43
494	8.00	80.58
495	10.20	80.99
496	13.54	90.00
497	18.00	94.13
498	20.28	100.00
499	22.00	100.00
500	23.77	91.15
501	28.08	90.00
502	30.00	86.01
503	32.85	80.70
504	32.86	100.00
505	33.37	100.00
506	36.00	100.00
507	51.77	100.00
508	60.57	95.72
509	64.00	70.00
510	64.91	70.00
511	75.83	70.00
512	82.00	70.00
513	85.72	51.42
514	86.17	49.14
515	88.49	35.13
516	90.00	15.99
517	91.12	26.74
518	92.00	32.85
519	93.74	30.00
520	89.29	−10.00
521	66.00	41.87
522	67.38	56.88
523	80.02	54.96
524	93.95	66.34
525	97.63	63.69
526	94.11	60.00
527	85.66	−10.00
528	70.00	−10.00
529	69.11	−10.00
530	66.80	−10.00
531	64.48	−10.00
532	53.00	44.98
533	52.73	49.27
534	62.00	40.00
535	62.00	43.88
536	64.18	44.55
537	53.36	4.86
538	46.26	15.79
539	46.00	19.83
540	45.65	10.00
541	45.99	10.00
542	48.05	10.00
543	44.71	3.54
544	48.82	−10.00
545	51.92	66.82
546	47.53	−10.00
547	36.31	9.23
548	17.73	55.68
549	29.43	38.22
550	36.00	37.46
551	36.00	40.00
552	34.00	40.00
553	34.00	40.00
554	34.00	36.25
555	38.26	24.68
556	43.38	64.38
557	50.78	46.12
558	52.00	19.92
559	52.32	0.0
560	52.09	3.19
561	48.00	10.00
562	48.00	10.00
563	48.00	10.00
564	30.94	19.48
565	28.00	20.00
566	28.00	20.00
567	28.00	15.81
568	28.00	10.00
569	26.53	10.00
570	26.00	10.00
571	23.71	−10.00
572	17.59	−10.00
573	11.65	−10.00
574	1.92	−10.00
575	0.0	0.0
576	0.0	0.0
577	0.0	0.0
578	0.0	0.0
579	0.0	0.0
580	0.0	0.0
581	0.0	0.0
582	0.0	0.0
583	1.26	25.19
584	6.72	47.87
585	13.67	40.56
586	16.20	80.00
587	18.52	80.00
588	25.83	75.83
589	35.15	70.00
590	38.93	77.31
591	41.78	80.00
592	40.00	10.00
593	40.00	20.18
594	40.00	52.78
595	40.00	34.82
596	40.00	30.00
597	40.00	38.33
598	40.00	30.09
599	38.30	100.00
600	40.61	100.00
601	42.00	100.00
602	42.00	100.00
603	42.00	100.00
604	42.00	100.00
605	42.00	100.00
606	42.50	97.50
607	43.19	85.93
608	43.13	85.85
609	44.00	90.00
610	44.00	90.00
611	44.00	80.00
612	44.00	80.00
613	44.70	80.00
614	46.00	74.91
615	46.00	63.34
616	46.00	60.00
617	46.00	60.00
618	44.00	10.00
619	44.00	10.00
620	43.09	10.00
621	42.00	10.00
622	42.00	10.00
623	43.85	19.26
624	50.00	90.00
625	50.00	90.00
626	50.00	90.00
627	50.00	90.00
628	50.00	90.00
629	46.26	90.00
630	48.00	89.73
631	48.37	80.00
632	49.32	80.00
633	48.00	80.00
634	48.00	80.00
635	48.00	80.00
636	48.00	70.26
637	48.00	70.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
638	48.00	70.00
639	48.00	74.44
640	48.00	61.96
641	49.52	50.00
642	50.00	50.00
643	50.00	40.00
644	50.00	44.62
645	50.78	60.00
646	52.00	49.09
647	52.00	40.00
648	52.00	40.00
649	52.04	40.89
650	54.00	90.00
651	54.00	90.00
652	54.00	85.10
653	55.29	73.53
654	56.00	70.00
655	56.00	70.00
656	56.00	60.00
657	56.00	57.23
658	56.00	50.00
659	56.00	38.17
660	56.00	30.00
661	56.00	30.00
662	54.00	39.36
663	54.00	27.79
664	54.00	20.00
665	54.00	20.00
666	54.00	20.00
667	54.00	11.49
668	54.00	0.08
669	54.00	13.31
670	54.00	30.00
671	54.96	30.00
672	57.28	30.00
673	56.41	30.00
674	57.91	30.00
675	58.22	36.60
676	60.00	90.00
677	60.00	90.00
678	60.00	95.82
679	60.00	92.60
680	60.00	90.00
681	60.00	90.00
682	60.42	90.00
683	62.74	90.00
684	65.05	90.00
685	66.00	83.16
686	66.00	71.59
687	66.00	70.00
688	66.00	70.00
689	66.00	73.14
690	66.00	80.00
691	66.00	86.28
692	66.00	90.00
693	66.00	90.00
694	68.20	100.00
695	70.00	100.00
696	70.00	100.00
697	70.00	100.00
698	74.38	100.00
699	76.00	100.00
700	72.09	100.00
701	73.60	100.00
702	72.00	100.00
703	72.00	100.00
704	72.00	100.00
705	72.00	100.00
706	72.00	100.00
707	72.29	100.00
708	73.39	100.00
709	72.92	100.00
710	74.00	100.00
711	74.00	100.00
712	77.73	100.00
713	78.00	100.00
714	77.50	100.00
715	76.00	100.00
716	76.00	100.00
717	76.00	100.00
718	72.49	100.00
719	71.79	100.00
720	67.16	100.00
721	72.70	100.00
722	75.02	100.00
723	73.34	100.00
724	73.64	91.78
725	74.00	31.21
726	78.27	28.63
727	80.00	17.05
728	80.00	5.48

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
729	80.00	−10.00
730	80.00	−10.00
731	80.00	63.93
732	84.00	80.00
733	85.43	82.39
734	87.62	93.96
735	84.00	100.00
736	84.00	100.00
737	84.00	91.32
738	86.00	100.00
739	86.73	100.00
740	90.00	96.59
741	91.99	90.00
742	94.00	90.00
743	95.63	81.87
744	98.00	89.70
745	100.00	98.72
746	100.57	78.60
747	102.88	50.00
748	104.00	73.99
749	104.00	90.00
750	104.00	25.98
751	103.71	20.00
752	99.54	20.00
753	98.00	20.00
754	99.09	25.44
755	98.60	65.08
756	103.15	80.00
757	100.03	80.00
758	102.35	80.00
759	104.00	73.38
760	104.09	55.11
761	101.42	30.62
762	98.39	11.97
763	57.65	−10.00
764	58.00	−10.00
765	57.45	−10.00
766	56.00	−10.00
767	56.00	−10.00
768	56.00	27.39
769	56.00	40.00
770	56.00	50.00
771	56.00	45.60
772	56.00	33.77
773	56.00	40.00
774	60.15	5.40
775	62.00	−10.00
776	62.00	−10.00
777	62.00	41.64
778	62.00	59.65
779	62.00	75.21
780	62.00	76.36
781	62.00	80.00
782	62.00	80.00
783	62.00	80.00
784	62.00	80.00
785	61.15	80.00
786	60.00	80.00
787	60.00	87.38
788	60.00	90.00
789	60.00	90.00
790	60.00	90.00
791	60.00	90.00
792	60.00	90.00
793	60.00	83.17
794	60.00	80.00
795	60.00	89.97
796	62.31	90.00
797	64.00	86.88
798	64.00	80.00
799	64.00	80.00
800	64.00	80.00
801	64.00	80.00
802	66.00	70.00
803	66.51	70.00
804	68.00	65.87
805	68.00	60.00
806	68.00	60.00
807	73.31	86.55
808	74.00	90.00
809	74.00	90.00
810	73.29	90.00
811	72.00	84.86
812	73.34	73.29
813	74.00	70.00
814	72.03	70.00
815	71.71	50.00
816	70.00	50.00
817	70.00	50.00
818	68.77	56.15
819	68.00	60.00

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
820	68.00	60.00
821	68.00	58.28
822	68.00	40.00
823	68.00	48.01
824	68.00	60.00
825	68.00	60.00
826	68.00	60.00
827	68.00	60.00
828	68.00	61.87
829	68.00	70.00
830	69.00	70.00
831	70.00	70.00
832	70.00	70.00
833	70.00	70.00
834	70.00	70.00
835	70.00	70.00
836	70.00	70.00
837	73.61	70.00
838	76.00	82.41
839	76.00	60.00
840	76.00	100.00
841	76.92	100.00
842	80.78	100.00
843	82.00	100.00
844	83.40	100.00
845	84.00	100.00
846	83.97	90.00
847	82.35	90.00
848	85.33	93.31
849	89.95	100.00
850	86.13	100.00
851	89.21	100.00
852	95.76	100.00
853	100.23	100.00
854	102.00	100.00
855	104.59	100.00
856	112.71	100.00
857	113.01	100.00
858	112.00	100.00
859	104.00	−10.00
860	103.56	−10.00
861	102.75	−10.00
862	102.94	−10.00
863	99.24	−10.00
864	94.61	−10.00
865	93.99	−10.00
866	92.32	−10.00
867	93.36	−10.00
868	92.00	−10.00
869	90.73	−10.00
870	88.42	−10.00
871	84.21	−10.00
872	82.00	10.00
873	82.00	7.38
874	82.00	−10.00
875	82.00	−10.00
876	68.79	48.69
877	64.00	70.00
878	64.00	70.00
879	58.66	67.95
880	37.27	60.00
881	34.96	60.00
882	32.65	73.54
883	30.33	80.00
884	28.02	80.00
885	25.70	50.00
886	23.39	37.76
887	21.07	10.00
888	18.76	10.00
889	14.89	−10.00
890	12.13	−10.00
891	5.45	−10.00
892	0.0	0.0
893	0.0	0.0
894	0.0	0.0
895	0.0	0.0
896	0.0	0.0
897	0.0	0.0
898	0.0	0.0
899	0.0	0.0
900	0.0	0.0
901	0.0	0.0
902	0.0	0.0
903	0.0	0.0
904	0.0	0.0
905	0.0	0.0
906	0.0	0.0
907	0.0	0.0
908	0.0	0.0
909	0.0	0.0
910	0.0	0.0

Record (section)	Percent	
	Normalized revolutions per minute	Normalized torque
911	0.0	0.0
912	0.0	0.0
913	0.0	0.0
914	0.0	0.0
915	0.0	0.0
916	0.0	0.0
917	0.0	0.0
918	0.0	0.0
919	0.0	0.0
920	−1.78	44.40
921	0.0	85.35
922	4.25	100.00
923	27.47	100.00
924	42.96	100.00
925	45.79	100.00
926	48.11	99.46
927	50.42	90.00
928	52.74	75.23
929	54.00	50.00
930	44.42	8.96
931	45.05	−10.00
932	46.00	9.99
933	37.69	−10.00
934	31.61	5.68
935	22.94	35.29
936	24.00	4.87
937	20.86	−10.00
938	12.45	−10.00
939	6.00	−10.00
940	6.52	−10.00
941	7.17	−10.00
942	2.56	−10.00
943	0.0	0.0
944	0.0	0.0
945	0.0	0.0
946	0.0	10.11
947	4.32	46.40
948	8.90	45.17
949	1.95	50.00
950	3.33	41.68
951	4.00	89.46
952	13.76	55.60
953	26.43	26.96
954	33.85	6.16
955	36.00	−10.00
956	34.45	−10.00
957	34.00	−10.00
958	35.64	−10.00
959	32.99	27.39
960	36.00	80.00
961	41.63	74.37
962	60.41	26.76
963	48.44	−10.00
964	43.86	−10.00
965	40.39	−10.00
966	38.50	4.01
967	35.05	30.00
968	40.66	16.70
969	43.64	26.45
970	45.96	−10.00
971	47.10	−10.00
972	49.28	−10.00
973	37.10	−10.00
974	36.00	−10.00
975	34.47	−10.00
976	32.15	−10.00
977	31.67	−10.00
978	28.48	13.89
979	32.38	90.00
980	36.00	90.00
981	41.69	90.00
982	45.74	90.00
983	49.95	80.00
984	49.10	80.00
985	50.59	62.97
986	45.99	34.98
987	42.76	7.23
988	35.12	−10.00
989	32.06	67.92
990	35.53	62.55
991	46.57	68.60
992	49.77	48.85
993	52.00	60.00
994	58.06	60.00
995	63.66	23.42
996	64.14	17.84
997	59.58	3.76
998	38.00	42.26
999	39.09	30.00
1,000	40.00	30.00
1,001	34.85	47.18
1,002	32.03	10.33
1,003	34.00	33.46
1,004	34.00	50.00
1,005	33.02	20.69
1,006	25.54	−10.00
1,007	15.57	−10.00
1,008	14.00	−10.00
1,009	14.47	27.64
1,010	18.00	4.49
1,011	17.13	−10.00
1,012	16.00	−10.00
1,013	10.02	−10.00
1,014	9.81	−10.00
1,015	5.88	−10.00
1,016	4.00	−10.00
1,017	4.00	−10.00
1,018	2.93	−10.00
1,019	0.62	−10.00
1,020	0.0	0.0
1,021	0.0	0.0
1,022	0.0	0.0
1,023	0.0	0.0
1,024	0.0	0.0
1,025	0.0	10.00
1,026	0.0	10.00
1,027	0.0	29.02
1,028	0.0	27.83
1,029	0.0	7.34
1,030	0.0	0.0
1,031	0.0	0.0
1,032	0.0	0.0
1,033	0.0	0.0
1,034	0.0	0.0
1,035	0.0	0.0
1,036	0.0	0.0
1,037	0.0	0.0
1,038	0.0	0.0
1,039	0.0	0.0
1,040	0.0	0.0
1,041	2.00	0.0
1,042	1.38	0.0
1,043	0.0	0.0
1,044	0.0	6.27
1,045	0.0	2.16
1,046	0.0	0.0
1,047	0.0	0.0
1,048	0.0	0.0
1,049	0.83	−10.00
1,050	2.00	−10.00
1,051	0.54	−10.00
1,052	0.0	0.0
1,053	0.0	0.0
1,054	0.0	0.0
1,055	0.0	0.0
1,056	0.0	0.0
1,057	0.0	0.0
1,058	0.0	0.0
1,059	0.0	0.0
1,060	0.0	0.0
1,061	0.0	0.0
1,062	0.0	22.01
1,063	1.23	72.29
1,064	6.63	80.00
1,065	17.29	89.29
1,066	22.17	90.00
1,067	24.00	82.70
1,068	24.00	31.96
1,069	24.00	−10.00
1,070	22.57	−10.00
1,071	22.00	−10.00
1,072	13.88	−10.00
1,073	10.00	−10.00
1,074	9.31	−10.00
1,075	3.99	−10.00
1,076	0.0	0.0
1,077	0.0	0.0
1,078	0.0	0.0
1,079	0.0	0.0
1,080	0.0	0.0
1,081	0.0	0.0
1,082	0.0	0.0
1,083	0.0	0.0
1,084	0.0	0.0
1,085	0.0	0.0
1,086	0.0	0.0
1,087	0.0	0.0
1,088	0.0	0.0
1,089	0.0	0.0
1,090	0.0	0.0
1,091	0.0	0.0
1,092	0.0	0.0
1,093	0.0	0.0
1,094	0.0	0.0
1,095	0.0	0.0
1,096	0.0	0.0
1,097	0.0	0.0
1,098	0.0	0.0
1,099	−2.52	6.30
1,100	−4.22	15.28
1,101	0.0	10.00
1,102	0.0	10.00
1,103	0.0	10.00
1,104	0.0	75.93
1,105	0.0	32.22
1,106	1.67	35.00
1,107	15.48	29.82
1,108	25.46	−10.00
1,109	24.22	−10.00
1,110	23.44	−10.00
1,111	12.41	80.00
1,112	8.94	83.61
1,113	7.26	84.82
1,114	16.70	80.00
1,115	24.67	63.33
1,116	0.24	79.81
1,117	0.0	8.52
1,118	0.0	0.0
1,119	0.0	0.0
1,120	0.0	0.0
1,121	0.0	0.0
1,122	0.0	0.0
1,123	0.0	0.0
1,124	0.0	0.0
1,125	0.0	0.0
1,126	0.0	0.0
1,127	0.0	0.0
1,128	0.0	17.59
1,129	0.0	19.83
1,130	0.0	10.00
1,131	0.0	10.00
1,132	0.0	10.00
1,133	0.0	3.34
1,134	0.0	0.0
1,135	0.0	0.0
1,136	0.0	0.0
1,137	0.0	0.0
1,138	0.0	0.0
1,139	0.0	0.0
1,140	0.0	0.0
1,141	0.0	0.0
1,142	0.0	0.0
1,143	0.0	0.0
1,144	0.0	0.0
1,145	0.0	0.0
1,146	0.0	0.0
1,147	0.0	0.0
1,148	0.0	0.0
1,149	0.0	0.0
1,150	0.0	0.0
1,151	0.0	0.0
1,152	0.0	0.0
1,153	0.0	0.0
1,154	0.0	0.0
1,155	0.0	0.0
1,156	0.0	0.0
1,157	0.0	0.0
1,158	0.0	0.0
1,159	0.0	0.0
1,160	0.0	0.0
1,161	0.0	0.0
1,162	0.0	0.0
1,163	0.0	0.0
1,164	0.0	0.0
1,165	0.0	0.0
1,166	0.0	0.0
1,167	0.0	0.0

41. Subpart P is added to read as follows:

* * * * *

Subpart P—Emission Regulations for New Gasoline-Fueled Heavy-Duty Engines and New Gasoline-Fueled Light-Duty Trucks; Idle Test Procedures

Sec.

86.1501–84 Scope, applicability.

Sec.
86.1502–84 Definitions.
86.1503–84 Abbreviations.
86.1504–84 Section numbering; construction.
86.1505–84 Introduction; structure of subpart.
86.1506–84 Equipment required and specifications; overview.
86.1507–84 [Reserved]
86.1508–84 [Reserved]
86.1509–84 Exhaust gas sampling system.
86.1510–84 [Reserved]
86.1511–84 Exhaust gas analysis system.
86.1512–84 [Reserved]
86.1513–84 Fuel specifications.
86.1514–84 Analytical gases.
86.1515–84 [Reserved]
86.1516–84 Calibration; frequency and overview.
86.1517–84 [Reserved]
86.1518–84 [Reserved]
86.1519–84 CVS calibration.
86.1520–84 [Reserved]
86.1521–84 [Reserved]
86.1522–84 Carbon monoxide analyzer calibration.
86.1523–84 [Reserved]
86.1524–84 Carbon dioxide analyzer calibration.
86.1525–84 [Reserved]
86.1526–84 Calibration of other equipment.
86.1527–84 Idle test procedure; overview.
86.1528–84 [Reserved]
86.1529–84 [Reserved]
86.1530–84 Test sequence; general requirements.
86.1531–84 through 86.1536–84 [Reserved]
86.1537–84 Idle test run.
86.1538–84 [Reserved]
86.1539–84 [Reserved]
86.1540–84 Idle exhaust sample analysis.
86.1541–84 [Reserved]
86.1542–84 Information required.
86.1543–84 [Reserved]
86.1544–84 Calculations; idle exhaust emissions.

Authority: Sections 202, 206, 207, 208, 301(a), Clean Air Act, as amended 42 U.S.C. 7521, 7525, 7541, 7542, and 7601.

Subpart P—Emission Regulations for New Gasoline-Fueled Heavy-Duty Engines and New Gasoline-Fueled Light-Duty Trucks; Idle Test Procedures

§ 86.1501–84 Scope, applicability.

This subpart contains gaseous emission idle test procedures for heavy-duty gasoline-fueled engines, and gasoline-fueled light-duty trucks. It applies to 1984 and later model years.

§ 86.1502–84 Definitions.

The definitions in § 86.084–2 apply to this subpart.

§ 86.1503–84 Abbreviations.

The abbreviations in § 86.084–3 apply to this subpart.

§ 86.1504–84 Section numbering; construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

Example: Section 86.1511–84 applies to the 1984 and subsequent model years until superseded. If § 86.1511–85 is promulgated, it would take effect beginning with the 1985 model year; § 86.1511–83 would apply to model years 1983 and 1984.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

(c) All provisions in this subpart apply to gasoline-fueled heavy-duty engines and gasoline-fueled light-duty trucks.

§ 86.1505–84 Introduction; structure of subpart.

(a) This subpart describes the equipment and the procedures required to perform idle exhaust emission tests on gasoline-fueled heavy-duty engines and gasoline-fueled light-duty trucks. Subpart A sets forth the testing requirements, reporting requirements, and test intervals necessary to comply with EPA certification procedures.

(b) Four topics are addressed in this subpart. §§ 86.1505–84 through 86.1515–84 set forth specifications and equipment requirements; §§ 86.1516–84 through 86.1526–84 discuss calibration methods and frequency; test procedures and data requirements are listed in §§ 86.1527–84 through 86.1542–84; and calculation formulae are found in § 86.1544–84.

§ 86.1506–84 Equipment required and specifications; overview.

(a) This subpart contains procedures for performing idle exhaust emission tests on gasoline-fueled heavy-duty engines and gasoline-fueled light-duty trucks. Equipment required and specifications are as follows:

(1) *Exhaust emission tests.* All engines and vehicles subject to this subpart are tested for exhaust emissions. Necessary equipment and specifications appear in §§ 86.1509–84 through 86.1511–84.

(2) *Fuel and analytical tests.* Fuel requirements for idle exhaust emission testing are specified in § 86.1513–84. Analytical gases are specified in § 86.1514–84.

§ 86.1507–84 [Reserved]

§ 86.1508–84 [Reserved]

§ 86.1509–84 Exhaust gas sampling system.

(a) The exhaust gas sampling system shall transport the exhaust sample from the engine or vehicle to the analysis system in such a manner as to maintain the integrity of the sample constituents that are to be analyzed.

(b) The sample system shall supply a dry sample (i.e., water removed) to the analysis system.

(c) A CVS sampling system with bag analysis as specified in § 86.1309–84 or § 86.109–82 is permitted. The inclusion of an additional raw carbon dioxide (CO_2) analyzer as specified in §§ 86.309–79 and 86.316–79 is required if the CVS system is used, in order to accurately determine the CVS dilution factor. The heated sample line specified in § 86.309–79 and § 86.310–79 for raw emission requirements is not required for the raw CO_2 measurement.

(d) A raw exhaust sampling system as specified in § 86.309–79 and § 86.310–79 is permitted.

§ 86.1510–84 [Reserved]

§ 86.1511–84 Exhaust gas analysis system.

(a) Analyzers used for this subpart shall meet the following specifications.

(1) The analyzers used must have a range such that the carbon monoxide (CO) idle standard specified in § 86.084–10 for heavy-duty engines or specified in § 86.084–9 for light-duty trucks will provide an analyzer response between 45 and 90 percent of full-scale deflection on the CO analyzer.

(2) The resolution of the readout device(s) for the range specified in paragraph (a)(1) of this section shall be equal to or less than 0.05 percent for the CO analyzer.

(3) For the range specified in paragraph (a)(1) of this section, the precision shall be less than ±6 percent of full-scale deflection. The precision is defined as two times the standard deviation of five repetitive responses to a given calibration gas.

(4) For the range specified in paragraph (a)(1) of this section, the mean response to a zero calibration gas shall not exceed ±3 percent of full-scale deflection during a 1-hour period.

(5) For the range specified in paragraph (a)(1) of this section the drift of the mean calibration response shall be less than ±3 percent of full scale during a 1-hour period. The calibration response is defined as the analyzer response to a calibration gas after the analyzer has been spanned by the electrical spanning network at the beginning of the 1-hour period.

(6) The analyzer must respond to an instantaneous step change at the entrance to the sampling system with a response equal to 90 percent of that step change within 15 seconds or less on the range specified in paragraph (a)(1) of

this section. The step change shall be at least 60 percent of full-scale deflection.

(7) The interference gases listed shall individually or collectively produce an analyzer reading less than ±2 percent of full scale on the range specified in paragraph (a)(1) of this section.

Interference gas	Concentration	Applicable analyzer
CO_2	14 percent	CO
C_3H_8	1 percent	CO
H_2O	Saturated vapor at 100°F	CO
NO_x	1,000 ppm	CO
O_2	5 percent	CO

(8) The analyzer shall be able to meet the specifications in paragraph (a) of this section under the following conditions:

(i) After a 30 minute warm-up from the prevailing ambient conditions;

(ii) Between 0 to 85 percent relative humidity; and

(iii) During flow variations of ±50 percent.

(b) The inclusion of a raw CO_2 analyzer as specified in § 86.309–79 and § 86.316–79 is required in order to accurately determine the CVS dilution factor.

§ 86.1512–84 [Reserved]

§ 86.1513–84 Fuel specifications.

The requirements of this section are set forth in § 86.1313–84(a) for heavy-duty engines, and in § 86.113–82(a) for light-duty trucks.

§ 86.1514–84 Analytical gases.

(a) If the CVS sampling system is used, the analytical gases specified in § 86.1314–84 shall be used for heavy-duty engines, or § 86.114–79 for light-duty trucks.

(b) If the raw CO sampling system in § 86.309–79 is used, the analytical gases specified in § 86.308–79 shall be used.

§ 86.1515–84 [Reserved]

§ 86.1516–84 Calibration; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.1518–84 through 86.1526–84.

(b) At least monthly or after any maintenance which could alter calibration, check the calibration of the CO analyzer. Adjust or repair the analyzer as necessary.

(c) Water traps, filters, or conditioning columns should be checked before each test.

§ 86.1517–84 [Reserved]

§ 86.1518–84 [Reserved]

§ 86.1519–84 CVS calibration.

If the CVS system is used for sampling during the idle emission test, the calibration instructions are specified in § 86.1319–84 for heavy-duty engines, and § 86.119–78 for light-duty trucks.

§ 86.1520–84 [Reserved]

§ 86.1521–84 [Reserved]

§ 86.1522–84 Carbon monoxide analyzer calibration.

(a) *Initial check.* (1) Follow good engineering practice for instrument start-up and operation. Adjust the analyzer to optimize performance on the range specified in § 86.1511–84(a)(1).

(2) Calibrate the analyzer with the calibration gas specified in § 86.1514–84.

(3) Adjust the electrical span network such that the electrical span point is correct when the analyzer reads the calibration gas correctly.

(4) Determine that the analyzer complies with the specifications in § 86.1511–84.

(b) *Periodic check.* Follow paragraphs (a)(1), (2), and (3) of this section as specified by § 86.1516–84(b). Adjust or repair the analyzer as necessary.

§ 86.1523–84 [Reserved]

§ 86.1524–84 Carbon dioxide analyzer calibration.

(a) The calibration requirements for the dilute-sample CO_2 analyzer are specified in § 86.1324–84 for heavy-duty engines and § 86.124–78 for light-duty trucks.

(b) The calibration requirements for the raw CO_2 analyzer are specified in § 86.330–79.

§ 86.1525–84 [Reserved]

§ 86.1526–84 Calibration of other equipment.

Other test equipment used for testing shall be calibrated as often as necessary according to good engineering practice.

§ 86.1527–84 Idle test procedure; overview.

(a) The idle emission test procedure is designed to determine the raw concentration (in percent) of CO in the exhaust flow at idle. The test procedure begins with the engine at normal operating temperature. (For example, the warm-up for an engine may be the transient engine or chassis dynamometer test.)

(b) Raw emission sampling must be made before dilution occurs from a single exhaust pipe in which exhaust products are homogeneously mixed. The configuration for dual-exhaust systems must also allow for raw emission measurements, which will require that an additonal "Y" pipe be placed in the exhaust system before dilution.

§ 86.1528–84 [Reserved]

§ 86.1529–84 [Reserved]

§ 86.1530–84 Test sequence; general requirements.

(a) The following test sequence lists the major steps encountered during the idle test:

Preparation
Warm-up (or Emission Test)
Preconditioning, 30 seconds minimum, six minutes maximum
Idle Stabilization, 30 ±5 seconds
Idle Emission Sampling, one minute minimum, six minutes maximum

These steps are described by subsequent procedures.

(b) Ambient test cell conditions during the test shall be those specified in § 86.1330–84 or § 86.130–78.

§§ 86.1531–84 through 86.1536–84 [Reserved]

§ 86.1537–84 Idle test run.

The following steps shall be taken for each test:

(a) Check the device(s) for removing water from the exhaust sample and the sample filter(s). Remove any water from the water trap(s). Clean and replace the filter(s) as necessary.

(b) Set the zero and span points of the CO analyzer with the electrical spanning network or with analytical gases.

(c) Achieve normal engine operating condition. The transient engine or chassis dynamometer test is an acceptable technique for warm-up to normal operating condition for the idle test. If the emission test is not performed prior to the idle emission test, a heavy-duty engine may be warmed-up according to § 86.1332–84(d)(2) (i) through (iv). A light-duty truck may be warmed up by operation through one Urban Dynamometer Driving Schedule test procedure (see § 86.115–78 and Appendix I to this part).

(d) Operate the warm engine at 2500 ±50 rpm and zero load for a minimum of 30 seconds and a maximum of 6 minutes.

(e) If the CVS sampling system is used, the following procedures apply:

(1) With the sample selector valves in the "standby" position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(2) Start the CVS (if not already on), the sample pumps, and the raw CO_2 analyzer. (The heat exchanger of the constant volume sampler, if used, shall be running at operating temperature before sampling begins).

(3) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

(4) Operate the engine or vehicle at curb idle for 30±5 seconds with the clutch disengaged or in neutral gear. A heavy-duty engine may also be disconnected from the dynamometer, or the dynamometer may be shut off.

(5) Begin CO bag sampling and raw CO_2 sampling.

(6) Sample idle emissions long enough to obtain a sufficient bag sample, but in no case shorter than 60 seconds nor longer than 6 minutes. Follow the sampling and exhaust measurements requirements of § 86.340–79(e) for the conducting of the raw CO_2 measurement.

(7) As soon as possible, tranfer the idle test exhaust and dilution air samples to the analytical system and process the samples according to § 86.1540–84. Obtain a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(f) If the raw exhaust sampling and analysis technique specified in § 86.309–79 is used, the following procedures apply:

(1) Warm up the engine or vehicle per paragraphs (c) and (d) of this section. Operate the engine or vehicle at the conditions specified in paragraph (e)(4) of this section.

(2) Follow the sampling and exhaust measurement requirements of § 86.340–79(e). The idle sample shall be taken for 60 seconds minimum, and no more than 64 seconds. The chart reading procedures of § 86.343–79 shall be used to determine the analyzer response.

(g) If the engine or vehicle stalls at any time during the test run, the test is void.

§ 86.1538–84 [Reserved]

§ 86.1539–84 [Reserved]

§ 86.1540–84 Idle exhaust sample analysis.

(a) Record the CO idle concentrations in percent.

(b) If the CVS sampling system is used, the analysis procedures for dilute CO and CO_2 specified in § 86.1340–84 apply. Follow the raw CO_2 analysis procedure specified in § 86.343–79 for the raw CO_2 analyzer.

(c) If the continuous raw exhaust sampling technique (§ 86.309–79) is used, the analysis procedures for CO specified in § 86.343–79 apply.

§ 86.1541–84 [Reserved]

§ 86.1542–84 Information required.

(a) *General data—heavy-duty engines.* Information shall be recorded for each idle emission test as specified in § 86.1344–84 (b), (c), and (d). The following test data is required:

(1) Date and time of day.

(2) Test number.

(3) Engine intake air or test cell temperature.

(4) Barometric pressure.

Note.—A central laboratory barometer may be used: *Provided,* that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(5) Engine intake or test cell and CVS dilution air humidity.

(6) Curb idle speed during the test.

(7) Idle exhaust CO concentration (dry basis).

(8) Idle exhaust raw CO_2 concentration (if applicable).

(9) Dilute bag sample CO and CO_2 concentrations (if applicable).

(10) Total CVS flow rate with calculated dilution factor for the idle mode (if applicable).

(b) *General data—light-duty trucks.* The following information shall be recorded with respect to each test:

(1) Test number.

(2) System or device tested (brief description).

(3) Date and time of day for the test.

(4) Instrument operated.

(5) Vehicle: ID number, manufacturer, model year, standards, engine family, evaporative emissions family, basic engine description (including displacement, number of cylinders, turbocharger used and catalyst usage), fuel system (including number of carburetors, number of carburetor barrels, fuel injection type and fuel tank(s) capacity and location), engine code, gross vehicle weight rating, inertia weight class and transmission configuration, as applicable.

(6) All pertinent instrument information such as tuning, gain, serial number, detector number and range. As an alternative a reference to a vehicle test cell number may be used, with the advance approval of the Administrator, provided test cell calibration records show the pertinent instrument information.

(7) *Recorder charts:* Identify zero, span, exhaust gas and dilution air sample traces.

(8) Test cell barometric pressure, ambient temperature and humidity.

Note.—A central laboratory barometer may be used: *Provided,* that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(9) Pressure of the mixture of exhaust and dilution air entering the CVS metering device (or pressure drop across the CFV), the pressure increase across the device, and the temperature at the inlet. The temperature may be recorded continuously or digitally to determine temperature variations.

(10) The number of revolutions of the positive displacement pump accumulated while exhaust samples are being collected. The number of standard cubic feet metered by a critical flow venturi would be the equivalent record for a CFV.

(11) The humidity of the dilution air.

Note.—If conditioning columns are not used (see §§ 86.122 and 86.144) this measurement can be deleted. If the conditioning columns are used and the dilution air is taken from the test cell, the ambient humidity can be used for this measurement.

(12) Curb idle engine speed during the test.

(13) Idle exhaust CO concentration (dry basis).

(14) Idle exhaust raw CO_2 concentration (if applicable).

(15) Dilute bag sample CO and CO_2 concentrations (if applicable).

(16) Total CVS flow rate with calculated dilution factor for the idle mode (if applicable).

§ 86.1543–84 [Reserved]

§ 86.1544–84 Calculation; idle exhaust emissions.

(a) The final idle emission test results shall be reported as percent for carbon monoxide on a dry basis. The results shall be reported to three significant digits.

(b) If a CVS sampling system is used, the following procedure shall apply:

(1) Use the procedures, as applicable, in § 86.1342–84 to determine the dilute wet-basis CO and CO_2 in percent.

(2) Use the procedure, as applicable, in § 86.345–79 to determine the raw dry-basis CO_2 in percent.

(3) Convert the raw dry-basis CO_2 to raw wet-basis. An assumption that the percent of water by volume in the raw sample is equal to the percent of raw dry-basis CO_2 minus 0.5 percent is acceptable. For example:

10.0% dry CO_2 − 0.5% = 9.5% water

(1.00 − 0.095) (10.0% dry CO_2) = 9.05% wet CO_2

(4) Calculate the CVS dilution factor (DF) by:

$$DF = \frac{\text{Raw wet } CO_2\text{—background } CO_2}{\text{Dilute wet } CO_2\text{—background } CO_2}$$

(5) Convert the dilute wet-basis CO to dilute dry-basis values. An assumption that the percent of water by volume in the sample bag is 2 percent is acceptable. For example:

Dilute dry CO = (dilute wet CO)/(1.00–0.02)

(6) Calculate the raw dry-basis CO values by:

Raw dry CO = (DF) (dilute dry CO)

(c) If the raw exhaust sampling and analysis system specified in § 86.309–79 is used, the percent for carbon monoxide on a dry basis shall be calculated using the procedure, as applicable, in § 86.345–79.

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Part III

Environmental Protection Agency

Municipal Wastewater Treatment; Secondary Treatment Information and National Pollutant Discharge Elimination System; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 133

[WH-FRL-2410-5]

Secondary Treatment Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule amends the secondary treatment information regulation to reflect changes required by section 23 of the "Municipal Wastewater Treatment Construction Grant Amendments of 1981," (Pub. L. 97-117) and experience with the secondary treatment requirements by both EPA and the States. The proposed rule would make the following changes in response to the Act:

- Define a category of facilities eligible for treatment equivalent to secondary treatment as those facilities that use a trickling filter (TF) or waste stabilization pond (WSP) treatment process and provide significant biological treatment of wastewater, but cannot consistently meet secondary treatment requirements,
- Define the minimum level of effluent quality attainable by such facilities during a 30-day period as an average value not to exceed 45 milligrams per liter (mg/l) for the pollutant parameters biochemical oxygen demand, 5-day (BOD_5) and suspended solids (SS), an average 7-day value for BOD_5 and SS not to exceed 65 mg/l, and a percentage removed of BOD_5 and SS not less than 65 percent,
- Provide procedures by which NPDES permitting authorities may establish alternative effluent requirements for facilities providing treatment equivalent to secondary treatment,
- Require that the case-by-case adjustment of individual POTW permits for such facilities reflect the performance or design capabilities of the facility, and assure that water quality is not adversely affected, where treatment equivalent to secondary treatment is provided, and
- Remove the 2 million gallons per day (mgd) flow limitation for WSPs eligible for adjustment of suspended solids effluent limitations.

This proposed rule would also add a definitions section to the secondary treatment information regulation for key terms and make minor editorial changes. Such changes are not substantive in nature. Unchanged regulatory language is also being printed in this proposal for the sake of completeness to the reader.

This proposed rulemaking does not make any change in the existing 85 percent removal requirement. However, in response to comments on various options for modifying the requirement which are discussed later in this preamble, the Agency intends to promulgate one or a combination of the options discussed. Interested readers are directed to the discussion in Section X and the Comments Invited section of this preamble.

DATES: Written comments on this proposed rule must be submitted on or before January 16, 1984.

ADDRESSES: Comments on this proposed rule should be addressed to: Central Docket Section [A-130], Attention: Docket No. G-81-3, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the complete record for this rulemaking and all comments received on this proposed rule at: Central Docket Section, Gallery 1, West Tower Lobby, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., business days.

In accordance with Section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* EPA has submitted a copy of this proposed rule, and supporting documents for a collection of information requirements to the Director of OMB for review and approval. Comments on the information requirements of this proposed rule may be sent to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer, EPA, 726 Jackson Place, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Charles Mooar, Office of Water Program Operations [WH-595], Environmental Protection Agency, Washington, D.C. 20460, (202) 382-7276.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section of this preamble describes the legal authority, background, technical and other aspects of the proposed regulations. The abbreviations, acronyms, and other terms used in the **SUPPLEMENTARY INFORMATION** section are defined in Appendix A of this notice.

These proposed regulations are supported by technical documents available from EPA. An overview of the design criteria, performance, reliability and limitations of biological treatment systems is provided in "Innovative and Alternative Technology Assessment Manual," [EPA 430/9-78-009, MCD-53, 1980]. Data collection efforts, performance analyses for various biological treatment systems and the methodologies used to develop this proposal are discussed in docket materials available for public inspection at the location indicated in the **ADDRESSES** section of this preamble, and in the "Technical Support Document for Proposed Regulations under Section 304(d)(4)," September 1983, which may be obtained from Office of Water Program Operations, Facility Requirements Division (WH-595), Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460: (202) 382-7271.

The Agency is also publishing in today's **Federal Register** a proposed rule for separate changes to the secondary treatment regulation that concern the optional use of alternative effluent limitations for five day carbonaceous biochemical oxygen demand ($CBOD_5$) instead of BOD_5. The potential use of $CBOD_5$ effluent limitations for TFs and WSPs is discussed in that proposal.

Also proposed elsewhere in today's **Federal Register** are revisions to permit program requirements for the National Pollutant Discharge Elimination System (NPDES) that would allow NPDES permits to be modified or reissued to reflect the limits required by the proposed revisions to the secondary treatment regulation.

Information in this preamble is presented in the following order:

I. Introduction
  A. Statutory Authority
  B. Previous Regulations
II. Background
  A. The Clean Water Act—Pub. L. 92-500 and EPA Response
  B. The 1981 Amendments—Section 23 of Pub. L. 97-117
  1. Provisions and Legislative History
  2. Summary
III. Overview of Biological Treatment Systems
  A. Biological Treatment Systems for Achieving Secondary Treatment
  B. Design, Performance, and Reliability
  1. Activated Sludge
  2. Trickling Filters (TFs)
  3. Waste Stabilization Ponds (WSPs)
  C. Types of Biological Treatment Systems in Use
IV. Data Collection Efforts
V. Classification of Treatment Processes
VI. Effluent Quality Attainable through Treatment Equivalent to Secondary Treatment
  A. 30-day and 7-day Averages
  B. Percent Removal Requirements
  C. Conclusions
VII. Summary of Proposed Rule
  A. Definition of Facilities Eligible for Treatment Equivalent to Secondary Treatment
  1. Inability of Facility to Consistently Achieve Secondary Treatment

2. Use of TF or WSP as Principal Process
3. Significant Biological Treatment
B. Minimum Level of Effluent Quality Attainable
C. Alternative State Requirements
D. NPDES Permit Adjustments
E. Other Proposed Changes
1. Suspended Solids Limits for Waste Stabilization Ponds
2. Definitions
VIII. Modification of Effluent Ranges
IX. Relationship to NPDES Permits
A. Case-by-Case Adjustment of NPDES Permits
1. Performance Capability and Design Factors
2. NPDES Permits for New Facilities
3. Water Quality Assurances
4. Seasonal Permits
B. Implementation
X. Additional Issues
A. Percentage Removal Requirements
B. Discussion of Issues
1. Correction of I/I Sources of Less Concentrated Wastewaters
2. Expected Influent Concentrations under Allowable Infiltration/Inflow Conditions
3. Typical Influent Concentrations
4. Unnecessarily Stringent Levels of Treatment
C. Options for Modifying the Percentage Removal Requirements
XI. Regulatory Reviews
A. Executive Order 12291
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Science Advisory Board
XII. Comments Invited
List of Subjects
A—Abbreviations, Acronyms and Terms Used in This Notice
B—Suspended Solids Limitations for Wastewater Treatment Ponds

I. Introduction

A. Statutory Authority

Section 301(b)(1)(B) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(b)(1)(B), requires that publicly owned treatment works (POTWs) achieve effluent limitations based upon secondary treatment as defined by the Administrator of EPA pursuant to section 304(d)(1) of the Act. Section 304(d)(1), 33 U.S.C. 1314(d)(1), requires that the Administrator publish information on the degree of effluent reduction attainable through the application of secondary treatment within sixty days of enactment and from time to time thereafter.

Section 304(d)(4) of the Act, 33 U.S.C. 1314(d)(4), as amended by section 23 of the "Municipal Wastewater Treatment Construction Grant Amendments of 1981" (Pub. L. 97–117), deems such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters as the equivalent of secondary treatment, and further directs the Administrator to provide guidance under section 304(d)(1) on design criteria for such facilities, taking into account pollutant removal efficiencies. Section 304(d)(4) further requires that water quality not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

B. Previous Regulations

The secondary treatment information regulation was originally promulgated on August 17, 1973 [38 FR 22298]. Generally, it established levels of effluent quality for the parameters biochemical oxygen demand, suspended solids, fecal coliform bacteria, and pH. Special consideration was provided for facilities subject to wet weather flows from combined sanitary and storm sewers, and facilities receiving high strength industrial wastes.

Two subsequent amendments promulgated on July 26, 1976 [41 FR 30788] and October 7, 1977 [42 FR 5665] provided for: (1) Deletion of the fecal coliform bacteria limitations and clarification of the pH requirement, and (2) special consideration for the suspended solids effluent limitations applicable to WSPs with wastewater flows of less than 2 million gallons per day (mgd).

The current secondary treatment information regulation defines "secondary treatment" (§ 133.102) as attaining an average effluent quality for both biochemical oxygen demand, five-day (BOD_5) and suspended solids (SS) of 30 milligrams per liter (mg/l) in a period of 30 consecutive days, an average effluent quality of 45 mg/l for the same pollutants in a period of 7 consecutive days, and 85 percent removal of the same pollutants in a period of 30 consecutive days. The effluent values for pH must be maintained between 6.0 and 9.0 unless certain demonstrations are made.

The regulation provides special consideration in three instances:

(1) Where secondary treatment works are affected by wet weather flows due to combined sewers, the percentage removal requirements may be adjusted (§ 133.103(a)),

(2) Where industrial contributions exceed 10 percent of the design flow, and the discharge of BOD_5 and SS by the industrial contributor permitted under sections 301(b)(1)(A)(i) or 306 of the Act would be less stringent than secondary treatment requirements, the 30-day and 7-day requirements for BOD_5 and SS may be adjusted (§ 133.103(b)),

(3) Where WSPs are the sole process used for secondary treatment and wastewater flows are less than 2 mgd, Regional Administrators and State Directors are authorized to adjust the SS effluent limitations to reflect the effluent quality achieved 90 percent of the time within a State or appropriate contiguous geographic area (§ 133.103(c)).

The existing regulation (§ 133.104(a)) requires the use of sampling and testing procedures for BOD_5 and SS specified in guidelines promulgated pursuant to sections 304(h) and 402 of the Act (40 CFR Part 136). The current secondary treatment information regulation also allows use of chemical oxygen demand (COD) or total organic carbon (TOC) testing as a substitute for BOD_5 when a long-term BOD:COD or BOD:TOC correlation has been demonstrated (§ 133.104(b)).

II. Background

A. The Clean Water Act—Pub. L. 92–500 and EPA Response

Sections 301, 304 and 402 of the Act provide the basic structure for translating Congress' broad goal of eliminating "the discharge of pollutants into the navigable waters," [35 U.S.C. 1251(a)(1)] into specific requirements that must be met by individual point sources. Section 301(b) of the Act authorizes the Administrator to set effluent limitations for categories of point sources. For POTWs, section 301(b)(1)(B) of the Act requires the achievement of effluent limitations based on secondary treatment as defined by the Administrator in section 304(d)(1) of the Act.

Section 304 of the Act contains requirements for the Administrator to follow in issuing regulations, information and guidelines. In section 304(d)(1) of the Act, the Administrator is directed to publish information on the "degree of effluent reduction attainable through application of secondary treatment."

Section 402 of the Act authorizes the establishment of the National Pollutant Discharge Elimination System (NPDES), under which every discharger of pollutants is required to obtain a permit. The permit requires the discharger to meet all the applicable requirements specified in regulations issued under sections 301 and 304 of the Act.

With the exception of the SS adjustment for WSPs, the current secondary treatment regulation itself does not address the type of technology used to achieve secondary treatment requirements. However, in section 304(d)(2) of the Act, the Administrator was directed to publish information on alternative waste management techniques and systems for best practicable waste treatment technology (BPWTT). The BPWTT requirement (CWA section 201(g)(2)(A)) is specifically applicable to grantees

receiving federal assistance under section 201 of the Act. In EPA's 1975 and 1976 notices on BPWTT [40 FR 49598, 41 FR 6190] and the BPWTT document ["Alternative Waste Management Techniques for Best Practicable Waste Treatment," EPA–430/9–75–013, MCD–13, October 1975], secondary treatment (or more stringent treatment) is stated as a minimum requirement for waste management alternatives employing treatment and discharge into navigable waters.

The BPWTT document reviewed alternative techniques available for achieving secondary treatment, including biological treatment such as the use of (waste stabilization) ponds, activated sludge, and TFs, but left basic decisions on the choice of a technology or alternative waste management technique to a case-by-case cost-effectiveness analysis.

B. The 1981 Amendments—Section 23 of Pub. L. 97–117

1. *Provisions and Legislative History.* The full text of section 23 of Pub. L. 97–117 reads as follows:

(4) For the purposes of this subsection [section 304(d)], such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objective of the Act, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment. [33 U.S.C. 1314(d)(4).]

The legislative history for section 23 shows that Congress was concerned that EPA had not "sanctioned" the use of certain biological treatment techniques that are effective in achieving significant reductions of BOD and SS for secondary treatment [S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981)]. The Report of the House Subcommittee on Investigations and Oversight stated that the 1973 secondary treatment standards—

Contributed to the design and construction of sophisticated and costly plants. This in turn has given rise to complaints of over-design and the need to upgrade or replace plants employing simpler processes that could not meet the new performance requirements, even though these plants were operating well in terms of achieving their original design performance levels.

* * * * *

The EPA definition of secondary also frequently imposed higher capital and operating costs on grantees, many of them smaller communities and operating costs on grantees, many of them smaller communities and sanitation districts, resulting from the more sophisticated technologies needed to meet the new standard and a need for higher plant operating skills and management capabilities. [H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 34–35 (1981).]

The House Oversight Report concluded by recommending that—

It would be constructive to permit a range of effluent limitations which permit the use, where appropriate, of such forms of treatment as trickling filters, lagoons, and ponds. Consideration should be given to basing the appropriate secondary municipal technology on the general characteristics of the receiving stream, the nature of the wastes involved and the affordability of various secondary treatment processes available to the community. [H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 73 (1981).]

In the same vein, the Senate Committee on Environment and Public Works reported that methods such as oxidation ponds and TFs are generally cheaper and more energy-efficient than "standard" methods, and that such technologies are particularly useful in smaller communities. The Senate Committee noted that "methods of achieving secondary treatment are also at the discretion of the Administrator," but concluded that EPA has not "sanctioned" the use of these methods (*i.e.*, oxidation ponds and TFs) for secondary treatment. Therefore, the Senate Report continues, section 23—

Permits the use of certain biological treatment facilities to meet the secondary requirement provided that water quality and particularly the objective of the Act is not adversely affected, *in spite of the fact that they may not consistently meet 85 percent removal.* [S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981), emphasis added.]

The legislative history presented above suggests that the amendment was intended to minimize the need for increased treatment and construction of costly new facilities where an alternative treatment technology could achieve significant biological treatment. The legislative history further suggests that the amendment would apply primarily to smaller communities, which could use TFs and WSPs that are not capable of consistently meeting effluent limitations based on current secondary treatment requirements.

Changes between the original Senate bill (S. 1274) and enacted provisions provide a further indication of legislative intent. The following language was used in Section 16 of S. 1274.

(4) For the purposes of this subsection (section 304(d)), such facilities as oxidation ponds, lagoons, and trickling filters shall be deemed the equivalent of secondary treatment when the owner or operator of a publicly owned treatment works makes a showing satisfactory to the Administrator that, taking into account local climate, the limited population served, and assurances as to the operation and maintenance of such facility, water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment. [S. 1274, 97th Cong., 1st Sess. section 16 (1981); 127 Cong. Rec. S5527 (May 21, 1981).]

In the enacted version of section 23 of Pub. L. 97–117 (supra) language was added to read: "such *biological treatment* facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment" [italics added]. The enacted provisions make clear that the equivalent facilities shall provide for biological treatment.

The enacted provisions contain language that requires the Administrator to provide criteria on the design and pollutant removal efficiencies of such biological treatment facilities, in accordance with the Administrator's existing authority to define the degree of effluent reduction attainable through secondary treatment [CWA section 304(d)(1)]. In implementing these provisions, the Administrator is directed to—

Take into account not only pollutant removal efficiencies, but also differing geographical/climatic conditions which affect treatment plant performance. The Administrator should also address the seasonal and geographical variability of biological treatment plant performance in the regulations issued to carry out this section. [S. Rep No. 97–204, 97th Cong., 1st Sess. 18 (1981).]

Apart from the references already cited which would suggest that such "equivalent" facilities cannot consistently meet secondary treatment performance requirements, but do achieve *significant* reductions of BOD and SS, the legislative history provides only limited direction on what other biological treatment technologies could be deemed equivalent. For example, the Senate Report only states that "this section is not intended to sanction the introduction of raw sewage into the Nation's waterways" [S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981)], while the report of the House Subcommittee on Investigations and Oversight states that "[t]here is a large range of both conventional and alternative technology available providing levels of treatment between primary and secondary for this purpose." [H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 73 (1981).]

In addressing water quality issues, the legislative history clearly rejects the use of receiving water quality as a factor in setting effluent limitations when using

the technology-based standard. The report of the House Subcommittee on Investigations and Oversight stated—

Prior to enactment of the 1972 Federal Water Pollution Control Act Amendments, which set out a technology based requirement that all communities have, as a minimum, secondary treatment, municipal (and industrial) treatment requirements were generally established on the basis of assessing a stream's assimilative capacity. Unfortunately, this water quality-based approach was, and still is, too vague and subject to analytical weaknesses. [H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 35 (1981).]

The Senate Report stated that—

Although water quality impact is not a consideration in defining technology-based regulations, a technology would not be acceptable for any category of dischargers if it is found that the technology is inadequate in terms of necessary water quality protection. [S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981)].

Instead of requiring POTW owner/operators to make assurances satisfactory to the Administrator that water quality will not be adversely affected [cf. S. 1274, 97th Cong., 1st Sess. section 16 1981)], the enacted provisions require that guidance be issued by the Administrator that assures no adverse effects on water quality as a result of deeming certain facilities as equivalent to secondary treatment. The report of the House Subcommittee on Investigations and Oversight provides some direction on the type of analysis that would be considered sufficient:

[I]t should not be necessary to make precise determinations of wasteload allocations as done (with great imprecision) in the establishment of water quality based effluent standards. Instead, it should suffice to categorize generally the volume and rate of flow of the water body, and nature and sensitivity of the aquatic life inhabiting it. [H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 73 (1981).]

2. *Summary.* The Agency believes that is should consider the following in implementing section 23 of Pub. L. 97–117:

(a) Facilities deemed equivalent to secondary treatment consist of biological treatment facilities that are capable of achieving significant reductions in BOD and SS, but cannot consistently achieve existing secondary treatment requirements;

(b) Oxidation pounds and lagoons [*i.e.*, waste stabilization ponds] and TFs are noted as examples of such facilities in both the Act and legislative history;

(c) Sophisticated and costly facilities built to achieve the current secondary treatment requirements are contrasted with "equivalent" biological facilities and technologies that are cheaper, easier to operate, but cannot consistently meet the current secondary treatment requirements;

(d) EPA has discretion under section 304(d)(1) of the Act in defining "facilities deemed equivalent to secondary treatment" and the degree of effluent reduction attainable by such facilities, but should also establish the criteria for such facilities based on design and pollutant removal efficiencies;

(e) The regulations should address variations in plant performance caused by geographic, climatic, or seasonal conditions;

(f) the provisions should be especially useful to smaller communities; and;

(g) The use of an approach that sets technology-based effluent limitations based on assimilative capacity of receiving waters was rejected, and a "technology-based approach" maintained, but implementation of these provisions must include assurances that water quality will not be adversely affected.

III. Overview of Biological Treatment Systems

A. Biological Treatment Systems for Achieving Secondary Treatment

In 1975 EPA published "Alternative Waste Management Techniques for Best Practicable Waste Treatment," [EPA–430/9–75–013, MCD–14, 1975], which identified three types of biological treatment systems for achieving secondary treatment: Activated sludge, trickling filters, and ponds. All three types of biological treatment were in general use in 1975 and prior to the passage of Pub. L. 92–500 either as sole processes or in combination; however, the activated sludge process is by far the most typical or "standard" method in use [cf. S. Rep, No. 97–204, 97th Cong., 1st Sess. 18 (1981)].

Suspended growth type systems, including activated sludge, generally consist of an aerator and clarifier and are usually preceded by primary sedimentation. The aerator, utilizing air (either diffused or mechanical) or pure oxygen, provides conditions for a suspended microbial growth that metabolizes the biodegradable wastes. The microbial growth is clarified and a portion recycled to maintain metabolism in the aeration tankage. The other portion (the build-up of microbial growth) and the primary solids go to an appropriate solids-handling facility. There are many variants of activated sludge or suspended growth systems, including oxidation ditches.

Attached growth type systems, *e.g.*, trickling filters, generally consist of filter bed of rock or synthetic media and clarifier and are usually preceded by primary sedimentation. Biological treatment occurs in a manner similar to a suspended growth system, except the microbial growth is attached to a fixed medium over which wastewater is repeatedly recycled. The excessive microbial growth is sloughed off the media and captured in a clarifier. In addition to rock and plastic media TFs, attached growth type systems include variations such as rotating biological contactors.

Ponds, or *waste stabilization pond* (WSP) type systems, consist of basins within which natural stabilization processes occur with any necessary oxygen provided by photosynthetic and/or mechanical sources. WSPs are commonly referred to as oxidation ponds or lagoons, and may stabilize wastes through aerobic metabolism, anaerobic metabolism, or both (facultative).

B. Design, Performance, and Reliability

In December 1980, the Agency published "Innovative and Alternative Technology Assessment Manual," [EPA 430/9–78–009, MCD–53, 1980]. The manual contains two-page fact sheets on various municipal treatment technologies, including biological treatment technologies. The fact sheets describe the treatment processes, process applicability, common process modifications, process limitations, performance and design criteria, construction and operation and maintenance cost curves, and process reliability.

1. *Activated Sludge.* The manual fact sheets describe several activated sludge type technologies and their general design criteria. When the technology is applied to provide secondary treatment (as opposed to advanced treatment), the manual indicates that an effluent quality for BOD_5 and SS on the order of 20 mg/l], can be achieved. The percentage removal of BOD_5 and SS achieved by such facilities is characterized as between 85 percent and 90 percent. The manual describes the limitations for such systems in terms of operational complexity, high operating costs, and high energy consumption.

For oxidation ditches, the manual indicates that the process is highly reliable in achieving an effluent quality of 20–30 mg/l for BOD_5 and SS. Oxidation ditches are characterized as offering an added measure of reliability and performance over other biological treatment processes, but are subject to some of the same limitations that other activated sludge treatment processes face. The process cost of treatment is

generally lower than other biological treatment processes in the range of wastewater flows between 0.1 and 10 mgd.

2. *Trickling Filters.* The manual fact sheets for TF technologies provide general design criteria and describe the effluent quality attainable by such facilities in a range of 25–45 mg/l BOD_5 and 20–45 mg/l SS, depending on the type of TF and operating conditions. For various TF technologies, the manual indicates the following ranges of percentage removal of BOD_5 and SS: 80 to 90 percent, 60–80 percent, and 75 to 90 percent. In moderate climates, the processes are characterized as highly reliable; however, the processes are also characterized as subject to vulnerability where wastewater temperatures fall below 13°C for prolonged periods. The processes are consistently noted as mechanically reliable and simple to operate.

3. *Waste Stabilization Ponds.* The manual fact sheets for WSP technologies indicate design criteria for ponds and describe the effluent quality attainable by various pond technologies in domestic waste applications as 25–30 mg/l BOD_5 and 20–150 mg/l SS.

Note.—Section 133.103(c) allows SSS values less stringent than 30 mg/l.

Algal problems are noted as affecting performance for SS removal. The manual notes that BOD_5 removal efficiencies of 75 to 95 percent have been reported for some WSPs. The processes are described as highly reliable and require little operator expertise.

C. Types of Biological Treatment Systems in Use

Since 1973, the suspended growth-activated sludge systems have been widely used as the "typical" or "standard" biological treatment method for achieving secondary treatment. Excluding pond installations, nearly 90 percent of the secondary treatment facilities put in place since 1973 have used some form of suspended growth system.

Approximately 1425 of the estimated 1700 existing TF facilities were constructed prior to 1973, while approximately 2950 of estimated 4050 existing WSPs were constructed prior to 1973. In the period between 1973 and July 1982, the Agency estimates that it has participated in funding the construction of over 3500 facilities to meet secondary treatment requirements. Of those facilities, only 281 of the facilities employed TF processes, while 1100 of the facilities employed WSP processes.

EPA believes that the limited number of TF facilities constructed following the passage of Pub. L. 92–500 and EPA's promulgation of the secondary treatment requirements can be attributed in part to a general awareness that the level of effluent quality consistently achieved by TF facilities is somewhat poorer than that consistently achieved by activated sludge type facilities. Although the cited biological treatment techniques were identified in the October 1975 BPWTT document as being capable of meeting current secondary treatment requirements, the ranges of design loadings (or other design criteria) for TFs would often result in more costly facilities than facilities constructed in accordance with designs for TFs that typically existed prior to passage of Pub. L. 92–500.

IV. Data Collection Efforts

In developing this regulation, EPA studied 324 existing biological treatment facilities to determine whether differences in wastewater characteristics, treatment process, design, size and age of facility, location, climate, or cost factors required the development of separate standards for certain classes of facilities. The Agency analyzed at least two years of performance records from each facility, and described the operational limitations, process variability, and process reliability of each facility with respect to meeting the existing secondary treatment requirements. The sample included the following process types and number of facilities: Conventional activated sludge (66), contact stabilization activated sludge (57), extended aeration activated sludge (28), oxidation ditches (28), rock media TFs (64), plastic media TFs (17), rotating biological contactors (27), and WSPs (37).

The technical data collection effort for these analyses is described in the docket materials for this proposed rule and the "Technical Support Document for Proposed Regulations under Section 304(d)(4)," September 1983. Although EPA fully believes that the available data support the minimum levels of effluent quality proposed (see Section VI of this preamble), the Agency continues to seek additional effluent data on the performance of biological treatment processes (see Section XII of this preamble).

V. Classification of Treatment Processes

As discussed in Section II of this preamble, the Agency believes that any relaxation of secondary treatment requirements under section 23 of Pub. L. 97–117 by deeming a facility as providing treatment equivalent to secondary treatment must be based on: (1) A determination that secondary treatment requirements cannot be met consistently through the use of a given *biological treatment process*, and (2) for such biological treatment processes, a determination that a given *facility* cannot consistently achieve secondary treatment requirements. In this section of the preamble, the Agency describes the methodology by which a treatment process would be classified as capable of providing either "treatment equivalent to secondary treatment," or as capable of providing "secondary treatment." Section VI of this preamble describes the basis of determining the level of effluent quality that is attainable by facilities that: (1) Use an equivalent treatment process, and (2) cannot consistently achieve secondary treatment requirements.

In developing the definition of "facilities eligible for treatment equivalent to secondary treatment," the Agency took into account the specific references in the Act to biological treatment, TFs, WSPs, and oxidation ditches. As a further refinement, and to ensure consideration of other types of biological treatment systems, the Agency reviewed the performance of 324 facilities that use a range of biological treatment processes.

The performance data for each of the 324 facilities in the data base were analyzed to estimate an effluent quality value (*i.e.*, empirical 95th percentiles estimated from sets of 30-day moving averages) which the given facility rarely exceeds on a monthly basis. Each of the facilities in the sample was classified by type of treatment process.

For this proposal, a treatment process was considered capable of providing secondary treatment if the median facility's BOD_5 and SS values of the 30-day average were less than mg/l BOD_5 and 30 mg/l SS. If the median value, for a given type of treatment process, of the 95th percentile estimates were greater than 30 gm/l for either BOD_5 or SS then the process type was classified as providing treatment equivalent to secondary treatment. (See Technical Support Document.)

In accordance with the methodology described above and in more detail in the support document, the Agency concluded that TF and WSP treatment processes could not consistently meet secondary treatment requirements; thus, the TF and WSP treatment processes were classified as equivalent treatment processes. The proposed classification is thus consistent with the statutory

language that references oxidation ponds, lagoons and TFs.

Using the same methodology, the Agency concluded that oxidation ditches, although they are referenced in the statute, could consistently achieve an effluent quality equal to or better than current secondary treatment requirements. As noted in Section III of this preamble, oxidation ditches are subject to the same limitations of operational complexity, operation costs and energy consumption as standard activated sludge type treatment processes. Given the legislative history that characterizes equivalent treatment processes as: (1) Simpler, more energy efficient and easier to operate than standard methods, and (2) unable to meet secondary performance standards consistently, even though operated to achieve original design performance levels [S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981); H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 34–35 (1981)], the Agency believes that oxidation ditches are appropriately classified as a treatment process capable of providing secondary treatment.

All other biological treatment processes were likewise found to be capable of consistently achieving secondary treatment requirements, and are thus classified as treatment processes capable of providing secondary treatment.

VI. Effluent Quality Attainable Through Treatment Equivalent to Secondary Treatment

As discussed in Section II of this preamble, Congress indicated that the use of certain biological treatment facilities should be permitted in spite of the fact that such facilities may not consistently meet a secondary treatment requirement [S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981)]. Thus, in order to determine the level of effluent quality attainable by certain *facilities* using equivalent treatment processes, *i.e.*, certain TF and WSP facilities that cannot consistently met secondary treatment requirements, the Agency believes that it is appropriate to group TF and WSP facilities based on their existing performance capabilities relative to current secondary treatment requirements.

For each pollutant and permit averaging period, Group A included those TF and WSP facilities whose empirically estimated 95th percentiles of their respective sets of 30-day moving averages were less than or equal to 30 mg/l. Since such facilities can be considered as capable of consistently meeting secondary treatment requirements for a given parameter and permit averaging periods, Group A facilities were not included for further analysis.

Group B included facilities whose empirically estimated 95th percentiles of their respective 30-day moving averages for each pollutant were greater than 30 mg/l. Group B facilities were used as the basis for determining the effluent quality attainable by providing treatment equivalent to secondary treatment.

A. 30-day and 7-day Averages

From the resulting sample of well-operated and maintained TF and WSP facilities, and the estimated 30-day BOD_5 and SS effluent values for each facility, a characterization of the effluent quality generally attainable by equivalent treatment processes was made for each pollutant, treatment process type, and permit averaging period by selecting the median (50th percentile) facility. In accordance with the methodology described in more detail in the technical support document, the Agency has concluded that the level of effluent quality attainable by treatment equivalent to secondary treatment can be characterized in terms of a 30-day average BOD_5 and SS of 45 mg/l.

Based on performance data for secondary treatment facilities, the maximum 7-day average effluent quality will be higher than the maximum 30-day average effluent quality by a factor in a range of 1.2 to 1.8. A discussion of the relationship of 30-day to 7-day values for TF and WSP facilities can be found in the tehnical support document for this proposed regulation. In keeping with the 1.5 factor (7-day/30-day) suggested by the 45 mg/l/30 mg/l requirements of the current secondary treatment standard, the Agency believes that a factor of 1.4 to 1.5 is appropriate; thus, the proposed 7-day average BOD_5 and SS effluent attainable by treatment equivalent to secondary treatment is 65 mg/l.

B. Percent Removal

The Agency investigated the feasibility of determining the characteristic pollutant removal efficiencies for BOD_5 and SS that are achieved by the subgroupings of TFs and WSPs. As noted in Section X of this preamble, the plant performance study determined that more than 75 percent of the facilities studied receive raw wastewater with concentrations of less than 200 mg/l for BOD_5 and SS. In more than 40 percent of the facilities the influent strengths were less than 150 mg/l BOD_5 and SS.

Since significant variation in influent strength affects the ability of the Agency to compare the pollutant removal efficiencies achieved by equivalent treatment processes, a percentage removal rate achieved by the median facility within each group was rejected as a basis for classifying the removal efficiency of TF and WSP treatment processes.

In general, however, the Agency's studies show that TF and WSP facilities are capable of achieving between 60 and 85 percent removal of BOD_5 on a 30-day average basis (cf. Section III of this preamble). Equivalent TF facilities are capable of achieving between 60 and 85 percent removal of SS on a 30-day average basis. For WSPs, SS removal requirements can be adjusted under existing provisions of § 133.103(c); thus no further changes are warranted.

For the purposes of this regulation, the Agency believes that 65 percent removal of BOD_5 and SS on a 30-day average basis represents a baseline pollutant removal efficiency that ensures a significant level of biological treatment beyond that generally achieved by primary treatment. Comments are requested in Sections X and XII of this preamble on issues relating to percentage removal requirements.

C. Conclusions

As discussed in Section II of this preamble, Congress indicated that "it would be constructive to permit a range of effluent limitations," rather than "a rigid, single set of numbers applicable on a nationwide basis" [H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 73 (1981)]. Although the effluent values described above in this section of the preamble characterize the average or general capabilities of TF and WSP facilities that cannot consistently meet secondary treatment requirements, the Agency believes that significant variation in performance among TF and WSP facilities would limit the usefulness of a single set of numbers as a blanket effluent limitation applicable to TF and WSP facilities.

The Agency therefore proposes that the calculated effluent values for equivalent treatment facilities act as a minimum level of effluent quality (*i.e.*, an upper limit for a range of effluent quality). The minimum levels of effluent quality for equivalent treatment facilities would thus be specified in terms of a 30-day average for BOD_5 and SS not to exceed 45 mg/l, a 7-day average for BOD_5 and SS not to exceed 65 mg/l, and a 30-day average percent removal of BOD_5 and SS not less than 65 percent. In addition, the existing regulation also provides for an alternative range of SS values achievable by WSPs under § 133.103(c),

which the Agency proposes to retain (amended § 133.103(c)).

The Agency suggests that the existing provisions of the secondary treatment regulation already provide the basis for a lower limit of the range, *i.e.*, 30 mg/l BOD_5 and SS on a 30-day average, 45 mg/l BOD_5 and SS on a 7-day average, and 85 percent removal of BOD_5 and SS. To account for variations in TF and WSP performance within the "range," *e.g.*, 30 to 45 mg/l, which may occur due to differences in design, wastewater characteristics, climate, seasonal and unique local factors, the Agency proposes that the adjusted NPDES permit effluent limitations for TF and WSP facilities be set based on an individual facility's performance capability. The Agency is thus proposing that a facility not be allowed to obtain NPDES effluent limitations that are any less stringent than the level of effluent quality that a facility is capable of achieving (see Section IX of this preamble). This policy will help to minimize additional pollutant loadings that could result from implementation of these proposed secondary treatment requirements, and will help to ensure that facilities continue to operate in accordance with their design capabilities [cf. 33 U.S.C. 1314(d)(4); H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 34–35 (1981); S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981)].

Where local or unique factors would result in a level of effluent quality that is higher than the proposed minimum level of effluent quality, EPA proposes that States be allowed to recommend specific alternative effluent requirements, subject to EPA approval, that take into account those factors (see Section VIII of this preamble). These proposed provisions would also help to ensure that implementation of section 23 of Pub. L. 97–117 by the Agency takes into account differing geographical/climatic conditions which affect treatment plant performance, and that an opportunity be provided to address any seasonal or geographical variability in biological treatment plant performance that could not be addressed in writing a regulation on a national basis [cf. S. Rep. No. 97–204, 97th Cong., 1st Sess. 18 (1981)].

VII. Summary of Proposed Rule

Today's proposed rulemaking for the secondary treatment requirements involves the following changes that the Agency believes explicity address the requirements of section 304(d)(4) of the Act: (1) A definition of "significant biological treatment" (proposed § 133.101(k)); (2) a definition of "facilities eligible for treatment equivalent to secondary treatment (proposed § 133.101(g)); (3) new provisions (proposed § 133.105 (a), (b) and (c)) which would define the effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment; (4) new provisions (proposed § 133.105(d)) that would set forth criteria that a Regional Administrator or State could use to establish alternative effluent requirements; (5) new provisions (proposed § 133.105(c)) which set forth the conditions under which NPDES permits may be adjusted for equivalent facilities; and (6) changes to the eligibility requirements for adjusting the SS values achievable by WSPs (amended § 133.103(c)). Other proposed changes include the addition of definitions for key terms (proposed § 133.101)), the addition of necessary cross-references to new provisions, and the elimination of redundant text. Such changes are not substantive in nature. Unchanged regulatory language is also being printed for the sake of completeness to the reader. Except as noted for certain TF and WSP facilities, the current secondary treatment requirements would not be changed under this proposal.

A. Definition of Facilities Eligible for Treatment Equivalent to Secondary Treatment

The proposed rule would use the following criteria (proposed § 133.101(g)) to define a category of existing facilities that provide treatment equivalent to secondary treatment: (a) The facilities cannot consistently achieve secondary treatment as currently defined, (b) the facilities employ either a TF or a WSP as the principal biological treatment process, and (c) the facilities provide for significant biological treatment of raw wastewater (at least 65 percent removal of BOD_5).

1. *Inability of Facility to Consistently Achieve Secondary Treatment.* Under the proposed provisions (proposed § 133.101(g)(1)), only those TF and WSP facilities that cannot consistently meet secondary treatment requirements would be eligible for a relaxation of the secondary treatment requirements. A discussion of the basis for this provision can be found in Sections II, V and IX of this preamble, and in the technical support document.

2. *Use of TF or WSP as Principal Process.* The Agency is proposing that an eligible facility use a TF or WSP as the principal process for providing significant biological treatment (proposed § 133.101(g)(2)). The justification for classifying equivalent facilities based on the use of a TF or WSP is discussed in Section V of this preamble and the technical support document. The term "principal process" is used to suggest the major biological treatment components that are directly in the treatment process train, rather than ancillary components. By focusing on "principal" processes, the proposed regulation would not exclude those facilities that incorporate minor components for improved treatment, *e.g.*, the addition of covers, chemical feeds, solids contact processes for TF, or the addition of sand filters or aeration for WSPs, provided that the TF or WSP unit is the principal process that results in significant removal of BOD_5

3. *Significant Biological Treatment.* The Agency is proposing that equivalent treatment works provide significant biological treatment of wastewater. These provisions ae based on the legislative history that Congress intended for certain facilities to be deemed the equivalent of secondary treatment if they achieve significant pollutant reductions, even though they cannot consistently meet EPA's existing secondary treatment requirements.

EPA findings referenced in Section III of this preamble show that when TF and WSP facilities are used as a biological treatment process they can be expected to remove between 60 and 90 percent of BOD_5. It is also noted that the legislative history of the 1972 Clean Water Act described primary treatment as removing from 30 to 50 percent of organic matter, *i.e.*, BOD_5, while secondary treatment was described as removing from 50 to 90 percent removal of BOD_5 [*Leg. Hist.* at 1424]. In proposed §§ 133.101(k) and 133.101(g)(3) the Agency would require that facilities deemed equivalent to secondary treatment provide at least 65 percent removal (across the plant) of BOD_5 on a 30-day average basis.

This proposed provision would ensure that the facilities applying for permit adjustments provide a level of treatment significantly beyond that achieved through primary treatment, *i.e.*, physical separation and removal of grit, coarse sands, settlable, and floatable materials. Thus, TF and WSP facilities that do not provide significant biological treatment, *e.g.*, roughing filters or equalization basins, would not meet the definition of significant biological treatment (proposed § 133.101(k)).

B. Minimum Level of Effluent Quality Attainable

Except for SS values for WSPs under the existing regulation (§ 133.103(c)), the proposed rule would define the effluent quality generally attainable by TF and WSP facilities during a 30-day period in

terms of a minimum level of effluent quality not to exceed 45 mg/l for BOD_5 and SS, during a 7-day period in terms of a minimum level not to exceed 65 mg/l for BOD_5 and SS, and 65 percent removal of BOD_5 and SS on a 30-day average basis (proposed § 133.105 (a) and (b)). The existing pH requirements for secondary treatment would not be adjusted (proposed § 133.105(c)). Under proposed § 133.105(b), the SS values for WSPs would be established in accordance with existing § 133.103(c). Applicable SS values established under § 133.103(c) were published on November 27, 1978 [43 FR 55279] and are reprinted as Appendix B to this preamble as guidance. The rationale for the proposed minimum levels of effluent quality is discussed in Section III, IV and VI of this preamble, and the technical support document for this proposed rule.

C. Alternative State Requirements

The proposed rule would allow States to recommend (subject to EPA approval) alternative requirements for the 30-day and 7-day effluent BOD_5 and SS concentrations based on effluent concentrations consistently achieved through proper operation and maintenance of the "median" facility in a sample of facilites meeting the defintion of "facilities eligible for treatment equivalent to secondary treatment" (proposed § 133.105(d)). The rational for this proposal is the Congressional intent that the Administrator should take into account geographic, seasonal and climatic conditions affecting plant performance. Further discussion is provided in Sections II and VIII of this preamble.

D. NPDES Permit Adjustments

Specific numeric effluent limitations for an eligible facility would be established on a case-by-case basis by the NPDES permitting authority based on the performance capabilities of the given facility (proposed § 133.105(e)); in no case, however, could the minimum levels of effluent quality established at the national (or State) level be exceeded. Further discussion on the relationship of this proposal to NPDES permits can be found in Section IX of this preamble.

E. Other Proposed Changes

1. *Suspended Solids Limits for Waste Stabilization Ponds (WSPs).* In 1977 EPA amended the secondary treatment regulation to allow an adjustment of the suspended solids (SS) effluent limitations where a WSP is used as the sole treatment process, provided that the wastewater flow was less than 2 million gallons per day (mgd). This proposed regulation would eliminate the 2 mgd "cap."

Agency experience with WSPs indicated that very few WSPs have been constructed to handle flows in excess of 2 mgd. Moreover, in those cases where existing WSP facilities with flows over 2 mgd have experienced violations of SS effluent limitations, the violations have primarily resulted from algal growth, as with smaller WSPs. The Agency does not believe that the additional SS allowance for WSP with flows over 2 mgd will result in any environmental effects, since § 301.(b)(1)(C) and 401 of the Act require effluent limitations that will meet water quality standards. Since there appears to be no compelling reason for maintaining the 2 mgd limit on application of the WSP/SS permit adjustment, the Agency is proposing elimination of the 2 mgd "cap" (existing § 133.103(c)(2)).

The docket materials for this proposed rulemaking indicate that many WSPs are not capable of reliably achieving 30 mg/l BOD_5 on a 30-day average. Since the performance data indicate that WSPs are generally capable of achieving an effluent quality of 45 mg/l BOD_5, they would be eligible for a BOD_5 permit adjustment under the proposed § 133.105 provisions for treatment equivalent to secondary treatment. Therefore, the reference in the existing § 133.103(c) to BOD_5 effluent quality achieved by WSPs has been changed from § 133.102(a) ("Secondary Treatment") to proposed § 133.105(a) ("Treatment Equivalent to Secondary Treatment").

2. *Definitions.* The proposed rule contains a "Definitions" section (proposed § 133.101) that would allow short-hand reference to key terms. Where appropirate, the existing regulation has been revised to eliminate redundancies by use of the defintitions. For example, the terms "30-day average" and "7-day average" have been used in place of longer statements. Changes to the existing language in § 133.102 and 133.103 are not substantive in nature, and have been included in this proposal for the sake of completeness to the reader.

In addition, cross-references have been added in existing sections of the regulation to reflect new amendments. For example, under the provisions for WSPs, references are made to proposed § 133.105 ("Treatment Equivalent to Secondary Treatment").

VIII. Modification of Effluent Ranges

The proposed regulations would establish a minimum level of effluent quality attainable by treatment equivalent to secondary treatment (proposed § 133.105 (a), (b) and (c)) with further provision that individual permits be adjusted to reflect plant performance capabilities (proposed § 133.105(e)). As an alternative to the effluent concentrations for BOD_5 and SS concentrations specified in proposed §§ 133.105 (a)(1), (a)(2), (b)(1) and (b)(2), EPA further proposes that individual States be allowed to recommend alternative effluent requirements that would reflect the performance of TF and WSP facilities within their State more accurately than the national limits. This proposed provision (proposed § 133.105(d)) would provide States with the flexibility to take into account additional local factors, and would thus be consistent with Congressional intent that the Agency take into account geographic, climatic, and seasonal factors affecting plant performance (see Section II of this preamble).

The WSP permit adjustment for SS concentrations (existing § 133.103(c)) provides a precedent for allowing States to participate in setting alternative effluent requirements by assessing the performance of local treatment works. In order to implement a similar process in an expedited manner, the Agency is proposing that a Regional Administrator or State determine the effluent concentrations consistently achieved by TF and WSP facilities in accordance with a methodology set forth in proposed §§ 133.105(b), 133.101(f), and 133.101(g). EPA would retain responsibility for approving any alternative requirements suggested by a State, and may veto any non-conforming permit (40 CFR 123.44(c)).

A Regional Administrator, or State, would have to demonstrate that: (1) Only TF and WSP facilities eligible for treatment equivalent to secondary treatment (proposed § 133.101(g)) are included the analysis, and (2) the recommended alternative requirements reflect the effluent concentrations consistently achieved by the median facility in a representative sample of facilities within a State or appropriate contiguous geographical area. Application of the proposed criteria would ensure that alternative requirements are developed in the same manner as used by EPA in developing the national numbers (see Section VI of this preamble and "Technical Support Document for Proposed Regulations under Section 304(d)(4)," September 1983). In developing alternative requirements, Regional Administrators and States may consider disaggregation of the sample of eligible facilities based on significant differences in climate (or

geography), seasonal performance, or variations in the type of TF or WSP employed. For each disaggregated sample, however, the criteria specified in proposed § 133.105(d) would have to be satisfied.

Since the implementation of the alternative State requirements provision would involve application of the regulatory criteria set forth in proposed § 133.105(d) during the NPDES permit process, EPA would not be proposing or promulgating the approved alternative effluent requirements. Although the Agency intends to publish values in the **Federal Register** as a notice to the public as was done for WSPs [43 FR 55279], approval of the alternative effluent requirements without a separate rulemaking should speed implementation of section 23 of Pub. L. 97–117. The Agency solicits comments on the appropriateness of such an approach. Comments on the proposed methodology should be made in response to this proposed rulemaking.

As an alternative to implementing alternative State requirements through the NPDES permit process, the Agency considered the use of formal rulemaking for each alternative State requirement. Under such a proposal, States would be required to submit recommendations within a specified time period, *e.g.*, 180 days. EPA would review the recommendations and any supporting data and analyses. Each alternative requirement deemed approvable by EPA, in accordance with the methodology proposed in this regulation, would be published as a proposed rule in the **Federal Register**. After taking public comment, the Agency would promulgate, if appropriate, the alternative State requirements. Approved alternative requirements could not be used in NPDES permits until EPA had promulgated them.

Although the Agency believes that implementation of the provisions contained in today's proposal (proposed § 133.105(d)) is appropriate, comments are invited on the advisability of formally promulgating both the methodology for determining alternative requirements *and* the alternative State requirements developed from application of that methodology.

On Section XII of this preamble, the Agency requests comments from States at this time on whether the State is likely to recommend an alternative State range, the level of effluent quality that might be recommended, and the number of facilities affected.

IX. Relationship to NPDES Permits

Section 402(a)(1) of the Act authorized the setting of requirements for direct dischargers on a case-by-case basis; however, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator. In the case of section 23 of Pub. L. 97–117, Congress directed the Administrator to deem certain facilities as the equivalent of secondary treatment, taking into account pollutant removal efficiency. The legislative history (see Section II of this preamble) indicates that Congress intended the Agency to consider design capability, performance, variability, and inability of these facilities to meet secondary treatment requirements consistently. The legislative history further suggests that the Administrator should consider the use of a "range" in setting requirements. Additional provision of section 23 require that assurances be made that water quality not be adversely affected.

In implementing a case-by-case approach, the Agency proposes that permit adjustments be based upon the performance capabilities of a treatment works. These requirements would reflect the direction of Congress that the Administrator issue regulations that consider the design of the facilities. Since the legislative history does not indicate any intent on the part of Congress to sanction poor operation and maintenance, or the abandonment of treatment processes, and since the legislative history does indicate that proper operation and maintenance for facilities within their original design performance levels should be assured [cf. S. 1274, 97th Cong., 1st Sess. section 16 (1981), 127 Cong. Rec. S5527 (May 21, 1981); H.R. Rep. No. 97–30, 97th Cong., 1st Sess. 34–35 (1981)], the Agency proposes to set effluent limitations based on proper operation and maintenance of facilities within their design capacity.

A. Case-by-Case Adjustments of NPDES Permits

The following amendments are proposed to implement case-by-case adjustments of NPDES permits for eligible facilities. Although these changes are proposed as part of the Secondary Treatment Information Regulation (40 CFR Part 133), the Agency believes that such changes may be more appropriately included as part of the NPDES permit regulation (40 CFR Part 122). Therefore, if the provisions set forth in proposed § 133.105(e) are promulgated, the Agency may promulgate them as an amendment to 40 CFR Part 122.

1. *Performance and Design Capability Factors.* For facilities that meet the eligibility requirements (proposed § 133.101(g)), the proposed regulation would allow the NPDES permitting authority to adjust effluent limitations for an individual treatment facility based on the performance capabilities of the treatment works (proposed § 133.105 (e)(1) and (e)(2). However, in no case, would the individual NPDES effluent limitations be set to values less stringent than those established at the national levels (proposed § 133.105 (a), (b), and (c)) or those established through procedures for alternative State requirements (proposed § 133.105(d)). (For those TF and WSP facilities that do not meet the eligibility requirements, *e.g.*, a TF that can consistently achieve the current secondary treatment requirements, an adjuustment of the permits would not be made.)

These provisions are intended to ensure that increased concentrations of pollutant do not result from facilities that are currently achieving a significantly higher degree of pollutant removal than would be allowed at the minimum level of established effluent quality, *e.g.*, 45 mg/l BOD_5 and SS on a 30-day average basis. It is important to note here that the essence of the proposed permit adjustment procedure is not to sanction increased levels of pollutant discharges, but to encourage the continued use of existing facilities using equivalent treatment processes and minimize unnecessary or untimely facility upgrading. Thus, levels of effluent quality that are already achieved by a facility must be maintained (proposed § 133.105(e)(1)).

Permit writer guidance on issues to consider in setting case-by-case effluent limitations will be issued in conjunction with any final rule. The effluent limitations should reflect the effluent quality achievable by a facility, based on present performance capabilities. In those cases where a facility is operating below its hydraulic design capacity, effluent concentrations should also be based on present performance data, taking into account that the total BOD_5 and SS pollutant load may increase as the effluent flow approaches the facility's hydraulic design capacity.

2. *NPDES Permits for New Facilities.* In developing NPDES permits for new TF and WSP facilities, the NPDES permitting authority would have to use a registered engineer's best professional judgment (BPJ) of the ultimate design capability of the proposed treatment process, taking into account geographical and climatic conditions (proposed § 133.105(e)(2)). Such BPJ determinations for new facilities should consider the performance capabilities of recently constructed facilities in similar

situations. Data available in technical support document and docket materials for this proposed regulation provide an indication of the performance capabilities of recently constructed facilities using TF and WSP processes.

In designing new TF and WSP facilities, design engineers should use appropriate design criteria that reflect the recent designs of such facilities in comparable situations. The design criteria specified in MCD–53 will provide general design guidance. However, it should also be recognized that engineering advances in the design of TF facilities, including the use of synthetic media, changes in geometry and sizing of TF towers, the use of covers, chemical additions, and low-cost "add-on" processes can result in significantly improved effluent quality from a TF facility in a cost-effective manner.

3. *Water Quality Assurances.* Section 23 of Pub. L. 97–117 (§ 304(d)(4) of the Act) requires that assurances be made that water quality will not be advesely affected by deeming facilities as the equivalent of secondary treatment. The Agency's NPDES permit regulations already require that any effulent limitations established in NPDES permits result in compliance with applicable water quality standards, State effluent requirements, and other provisions of the Act (see 40 CFR 122.44 at 48 FR 14169 and 40 CFR 124.53).

4. *Seasonal Permits.* EPA recognizes that the performance of "equivalent" treatment processes such as TFs and WPSs may be affected by differences in temperature, and thus, such facilities may exhibit variation in performance depending on geographical, climatic, or seasonal factors. For a given facility, there may be significant differences in performance from one period of the year to another. In implementing proposed § 133.105(e), the Agency suggests that NPDES permit writers consider the development of seasonal permits that would reflect such differences in performance where the differences are significant. If a seasonal permit is developed, a specific time period, during which the different effluent limitations would apply, should be established during the permit revision process based on historical records for either mean monthly ambient air temperature or effluent wastewater temperature.

B. Implementation

Due to the large number of municipal permits that could be impacted by the proposed rule, a priority system must be established by EPA and NPDES authorized States to implement the rule. The preferred method of implementation would be during normal permit reissuance.

In the Agency's sample of 64 rock media TF facilities, 41 facilities could not reliably achieve 30 mg/l BOD_5 on a 30-day average, while 36 facilities could not reliably achieve 30 mg/l SS on a 30-day average. For the 17 plastic media TFs in the study, 9 facilities could not reliably achieve 30 mg/l BOD_5 on a 30-day average, while 6 facilities could not reliably achieve 30 mg/l SS on a 30-day average. (For the purposes of deriving effluent ranges for TFs, plastic media TF facilities were grouped with rock media TFs). Of the 37 WSP facilities, 23 facilities could not consistenly achieve the Agency's existing BOD_5 requirements.

Applying these findings to the performance of the approximately 5800 existing TFs and WSPs nationwide, it is estimated that two-thirds of all TF and WSP facilities (or approximately 3800 facilities) would be potentially eligible for adjustment of NPDES permit effluent limitations.

It is also estimated that approximately one-half of the NPDES permits for TF and WSP facilities have expired or are due for reissuance. Thus, about 1900 facilities could be handled through the preferred method of adjusting NPDES permits at time of reissuance. The other 1900 facilities would be reissued over a 5-year period.

Elsewhere in today's **Federal Register** the Agency is proposing changes to 40 CFR 122.62 that would allow municipalities to request permit modification prior to reissuance. Therefore, if the changes to 40 CFR 122.62 are published as a final rule, permittees who wish to request modification prior to reissuance may do so, but must submit their requests for modification within 90 days of the publication date for the final secondary treatment regulation (cf. section 122.6(a)(3)(i)(C)).

In setting priorities for water quality standards, wasteload allocation and monitoring resources needed to implement permit adjustments, States should take into account other program activities (cf. Water Quality Standards regulation, 40 CFR Part 131, and Water Quality Planning and Management regulation 409 CFR Part 130).

X. Additional Issues

A. Percentage Removal Requirements

In addition to the 30-day average effluent concentration requirements of 30 mg/l for BOD_5 and SS established under §§ 133.102 (a)(1), and (b)(1), the current secondary treatment regulation requires 85 percent removal of those pollutants on a 30-day average basis (§§ 133.102 (a)(3) and (b)(3)). For less concentrated wastewaters (for the purposes of the following discussion, less concentrated wastewaters shall mean wastewaters with influent concentrations of less than 200 mg/l for BOD_5 and SS), the existing regulation thus requires a POTW to provide a level of treatment more stringent than that required by the 30 mg/l secondary treatment effluent limitations for BOD_5 and SS. Although the requirement can result in forcing "advance treatment," the 85 percent removal requirement was originally established to achieve two basic objectives: (1) To help encourage municipalities to correct excessive infiltration and inflow (I/I) to their sanitary sewer systems, and (2) to help prevent intentional dilution of influent wastewater.

Based on EPA and State experience with the secondary treatment requirements, EPA is aware that changes to the mandatory 85 percent removal requirement should be considerd. Although the Agency is not proposing to make any changes to the percentage removal requirements at this time, the Agency requests comments on the following questions in order to determine whether the nature of the problems warrants changes in the requirement:

(1) Are measures to correct sources of less concentrated wastewaters, such as correction of I/I, as effective as previously assumed?

(2) Will sewer systems subject to nonexcessive quantities of I/I (*i.e.*, I/I that cannot be economically and effectively reduced in a sewer system) have wastewaters with BOD_5 concentrations of 200 mg/l or will they by significantly less?

(3) Is the typical influent wastewater to POTW's generally less than 200 mg/l?

(4) Will maintenance of the 85 percent removal requirement require certain POTWs to provide overly stringent treatment where I/I cannot be economically and effectively reduced in a sewer system? and

(5) Would other regulatory mechanism, such as sewer use ordinances, grant conditions, flow limits, mass load limits, and other permit requirements, be more effective in prevention of deliberate dilution of influent wastewater to meet effluent concentration requirements?

B. Discussion of Issues

1. *Correction of I/I Sources of Less Concentrated Wastewaters.* Under the Clean Water Act (33 U.S.C. 1281(g)(3))

and EPA's construction grants program (cf. 40 CFR 35.2005(b)(16) and 35.2120), grants for the construction of treatment works cannot be made unless an applicant has demonstrated that the sewer system is not subject to "excessive" I/I. The Agency has defined excessive I/I as quantities of I/I which can be economically eliminated from a sewer system as determined in cost-effectiveness analysis that compares the costs of correcting the I/I conditions to the total costs of transportation and treatment of the I/I.

The 85 percent removal requirements can be an element in the cost-effectiveness analysis by requiring a municipality to provide a higher level of treatment when the influent wastewaters are less concentrated than 200 mg/l for BOD_5 and SS. The 85 percent removal requirement also acts to hold a POTW to a more stringent level of treatment until such time as the causes of the less concentrated wastewater are corrected. The feasibility of this regulatory approach is based on an assumption that a municipality will in fact be able to implement corrective measures that are less costly than the alternative of providing additional hydraulic capacity.

EPA initally believed that substantial portion of the I/I problem (from seventy to one hundred percent) could be corrected through cost-effective sewer system rehabilitation. However, more recent information ("Evaluation of Infiltration/Inflow Program," draft technical reports, 1979, 1980) indicates that available infiltration correction techniques are far less effective than initially predicted, and that the actual portion of infiltration amenable to correction may be in a range from zero to forty percent. As a result, even large expenditures for correction of sewer leakage may result in relatively small ultimate reduction of the infiltration problem, while BOD_5 and SS concentrations remain below 200 mg/l.

The Agency requests comments on the ability of infiltration and inflow correction programs to result in raw wastewater with concentrations of 200 mg/l BOD_5 and SS or greater.

2. *Expected Influent Concentrations under Allowable Infiltration/Inflow Conditions.* Although influent wastewater for POTWs is often characterized as typically having concentrations of 200 mg/l for BOD_5 and SS, less concentrated influent wastewaters are likely even where facilities receive flows from properly maintained sewer systems. The construction grants programs has specified a base flow of 120 gallons per capita per day (gpcd), which is used to determine grant eligible capacity for treatment of domestic wastewater (40 CFR 35.2005(b) (28), and 40 CFR 35.2120). This figure is based on an assumed 70 gpcd domestic wastewater and 50 gpcd of nonexecessive infiltration. No further I/I work is required if domestic wastewater plus nonexecessive infiltration is less than 120 gpcd. For nonexcessive inflow, the construction grant regulations allow a rainfall induced peak from inflow sources that does not exceed the hydraulic capacity of the treatment works or cause chronic operational problems during storm events (cf. 35.2005(b)(29)).

Based on a typical BOD_5 load from domestic uses and flows within the grant allowable level, an influent strength of approximately 170 mg/l for BOD_5 and SS could be expected. Where a sewer system is subject to higher levels of infiltration that cannot be economically or effectively eliminated (cf. 40 CFR 35.2005(b)(16)), or nonexecessive inflow during storm events, the influent strength would be reduced below 170 mg/l for BOD_5 and SS. Thus, the 85 percent removal requirement could require treatment more stringent than 30 mg/l BOD_5 and SS, even though cost-effective I/I correction had been implemented.

3. *Typical Influent Concentrations.* The discussion above suggests that influent strength to POTWs without large industrial contributions will generally have concentrations less than 200 mg/l for BOD_5 and SS. In fact, EPA studies referenced in Section IV of this preamble have found that more than three-quarters of the facilities studied had influent strengths of less than 200 mg/l for BOD_5 and SS. Approximately 40 percent of the facilities had influent strengths less than 150 mg/l for BOD_5 and SS. Thus, the significant majority of the facilities in this representative sample would be expected to provide a level of treatment more stringent than 30 mg/l for BOD_5 and SS under the 85 percent removal requirement. The Agency requests comments on whether typical influent wastewater strengths are less than 200 mg/l for BOD_5 and SS.

4. *Unnecessarily Stringent Levels of Treatment.* It has been suggested that the current requirement may drive a facility to providing advanced treatment of municipal wastewaters, even though there is no water quality basis for that level of treatment. In such situations, a cost-effectiveness analysis would have determined that treatment was more cost-effective than correction of the sources of the less concentrated wastewater. The Agency requests comments on whether advanced treatment would be needed for less concentrated wastewaters to comply with the 85 percent removal requirement.

C. Options for Modifying the Percentage Removal Requirements

The Agency has identified and requests comments on the following options (or combination of options) for modifying the percentage removal requirement:

(1) Eliminate the mandatory requirement, but provide substitute language allowing an NPDES permitting authority to establish percent removal requirements for BOD_5 and SS;

(2) Modify the requirement so that it applies on an annual average basis instead of applying on a 30-day average basis;

(3) Modify the requirement to provide for a percent removal of BOD_5 and SS on a 30-day average that is less than 85 percent;

(4) Retain the 85 percent removal requirement, but allow the substitution of either a flow limit or a mass loading limit for BOD_5 and SS; and

(5) Determine percentage removal requirements on a case-by-case basis using the design removal efficiency for BOD_5 and SS.

Based on comments received, the Agency will determine whether changes in the requirement are warranted. At this time, EPA is considering all five options (or combination of options). The Agency currently believes that elimination of the mandatory requirement at the discretion of the NPDES permitting authority (Option 1), or the substitution of mass limits or flow limits (Option 4) are the preferred options if a change in the existing requirement is appropriate. Elimination of the requirement, with flexibility to impose percentage removal requirements where needed, would allow the existing requirement to be imposed when necessary, but would also provide refief to facilities that are violating the 85 percent removal requirement even though the facilities and sewer systems are in good condition. A mass limit or flow limit would help to ensure against the introduction of clear water into sewer systems to achieve effluent concentration limitations through dilution.

The Agency specifically invites comment on the need to modify the existing regulation and on each of these alternative ways of modifying the requirement. Any of these alternatives might be selected in the final regulation Accordingly, the public should submit comments on this issue at this time. If

EPA determines that a change in the requirement is necessary, EPA intends to promulgate new requirements based on one of the five options.

XI. Regulatory Reviews

A. Executive Order 12291

Under Executive Order (E.O.) 12291 EPA is required to Judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. The Agency has determined that this proposed regulation is not a major rule within the scope of E.O. 12991. This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review as required under E.O. 12291. Any comments from OMB and any EPA response are available for public inspection at the location noted in the **ADDRESSES** section.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit a copy of any proposed rule which contains a collection of information requirement to the Director of OMB for review and approval. The Agency has determined that a new collection of information requirement would be involved under proposed § 133.105(d). EPA has submitted the proposed rule and supporting documents on the information collection requirement to OMB under Section 3504(h) of the Paperwork Reduction Act. Comments on the Agency's proposed information collection request may be sent to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer, EPA, and to the location given in the **ADDRESSES** section of this preamble. The final rule will explain how the Agency has responded to any OMB or public comments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA to assess the impact of its regulatory proposals on "small entities." No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The NPDES permit modifications proposed today will allow NPDES permitting authorities to modify discharge requirements for many of the small communities that use TF and WSP treatment technologies. In those cases, where requirements are modified, the costs of construction of new facilities, and operation and maintenance costs of existing facilities would be eliminated or reduced. The estimates of the ultimate benefits that will accrue to small communities as a result of this proposal are uncertain because of the flexibility provided, and inherent resulting difficulties in estimating cost impacts. Although precise quantification of costs and benefits of this proposal is not possible, the Agency believes that this proposal will have a net beneficial effect.

For operational facilities that meet the criteria for treatment equivalent to secondary treatment (proposed §§ 133.101(g) and 133.105), communities may seek adjustment of NPDES permits where current requirements are not being met. The Agency estimates that the proposed rule would enable over 3900 facilities to experience significant cost savings through deferral or elimination of costly capital improvements. In Section XII of this preamble the Agency is requesting additional summary data and estimates of the number of facilities that would be eligible for adjustments of their NPDES permits under this proposed rule.

For new TF and WSP facilities, the adjustments from secondary treatment requirements would be based on the best professional judgment of the design capabilities of the proposed facility. This provision should result in the expanded use of these less expensive wastewater treatment technologies, and the initial capital investment would be less than under current requirements. This should also result in lower EPA grant awards in many cases, releasing funds for additional projects that may not have been funded except for this cost savings measure. Additional operation and maintenance savings will result as well.

Thus, the Agency believes that today's proposal will not result in any significant economic impact on small communities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this amendment will not have a significant impact on a substantial number of small entities.

D. Science Advisory Board

Pursuant to provisions of the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) of 1978, 42 U.S.C. 4365, EPA's Science Advisory Board (SAB) has reviewed certain technical aspects of this proposed rule. Public meetings were held on November 29, 1982, January 17, 1983, February 10–11, 1983, April 27, 1983, and June 22–23, 1983 [47 FR 51471, 48 FR 508, 48 FR 3652, 48 FR 15535, 48 FR 24970]. The SAB has noted that it believes that new TF facilities can be designed to meet current secondary treatment requirements. In Section XII of this preamble, the Agency is requesting comments on the performance capabilities and associated costs of new TF facilities. SAB comments received prior to publication of this proposed rule are a part of the record for this proposed rulemaking, and are available for public inspection at the location given in the **ADDRESSES** section of this notice. Any additional SAB comments will be considered during the public comment period on this proposed rule, and will be available for public inspection as part of the record for promulgation of a rule.

XII. Comments Invited

The Agency invites and encourages comments on any aspect of the proposal set forth in this notice but is particularly interested in receiving comments on the issues listed below. All comments received within 60 days will be considered in the promulgation of a final rule. In order for the Agency to evaluate the views expressed, the comments should contain specific data and information to support those views.

A. The Agency requests comments and supporting summary data from States on the number and type of facilities that may be eligible for the proposed effluent limitations adjustments (proposed § 133.105)). Where appropriate, the agency is also interested in receiving comments from States (together with preliminary estimates of any alternative BOD_5 and SS limits, and the number of affected facilities) on any alternative State effluent requirements (proposed § 133.105(d)) that might be recommended for treatment equivalent to secondary treatment. Comments are specifically requested on the appropriateness of implementing the alternative State requirements in the NPDES permit process in accordance with the methodology set forth in the proposed criteria (see Section VIII of this preamble). In addition, the Agency invites comments on whether it would be appropriate to establish alternative State requirements through formal rulemaking procedures.

B. As discussed in Section X of this preamble, the Agency is considering promulgation of one of the following potential changes to the mandatory percentage removal requirements:

(1) Eliminate the mandatory requirement, but provide substitute language allowing an NPDES permitting

authority to establish percent removal requirements for BOD_5 and SS;

(2) Modify the requirement so that it applies on an annual average basis instead of applying on a 30-day average basis;

(3) Modify the requirement to provide for a percent removal of BOD_5 and SS on a 30-day average that is less than 85 percent;

(4) Retain the 85 percent removal requirement, but allow the substitution of either a flow limit or a mass loading limit for BOD_5 and SS; and

(5) Determine percentage removal requirements on a case-by-case basis using the design removal efficiency for BOD_5 and SS.

C. In order to help it evaluate its current preference to promulgate either Option (1) or Option (4), the Agency requests comments on the following questions:

(1) Are measures to correct sources of less concentrated wastewaters, such as correction of I/I, as effective as previously assumed?

(2) Will sewer systems subject to nonexcessive quantities of I/I (*i.e.*, I/I that cannot be economically and effectively reduced in a sewer system) have wastewaters with BOD_5 concentrations of 200 mg/l or will they be significantly less?

(3) Is the typical influent wastewater to POTWs generally less than 200 mg/l?

(4) Will maintenance of the 85 percent removal requirement require certain POTWs to provide overly stringent treatment where I/I cannot be economically and effectively reduced in a sewer system? and

(5) Would other regulatory mechanisms, such as sewer use ordinances, grant conditions, flow limits, mass load limits, and other permit requirements, be more effective in prevention of deliberate dilution of influent wastewater to meet effluent concentration requirements?

D. In proposed § 133.105(e)(2), the Agency is proposing that NPDES permit effluent limitations for new TF and new WSP facilities be developed using best professional judgment of design capabilities of the proposed treatment process, taking into account geographical and climatic conditions. The Agency's Science Advisory Board has suggested that new TF facilities can be designed to achieve current secondary treatment requirements. However, the Agency's experience in the construction grants program is that new TF facilities are rarely proposed as the preferred treatment alternative for meeting secondary treatment. In order to assess the need for guidance on the issue of permit effluent limitations for new TF (as well as WSP) facilities, the Agency requests comments and supporting data on the performance capabilities, capital costs and operating costs of newly designed TF (and WSP) facilities. If possible, such comments and data should address the comparative performance data and the costs for alternative treatment technologies considered in cost-effectiveness analysis for such facilities.

List of Subjects in 40 CFR Part 133

Publicly owned treatment works, Waste treatment and disposal, Water pollution control.

Dated: November 4, 1983.

William D. Ruckelshaus,

Administrator.

Appendix A—Abbreviations; Acronyms and Terms Used in This Notice

Act—The Clean Water Act

Agency—The United States Environmental Protection Agency

BOD_5—Biochemical oxygen demand (BOD_5)

BPWTT—Best practicable waste treatment technology, under sections 201(g)(2)(A) and 304(d)(2) of the Act, and repealed section 301(b)(2)(B) of the Act

CWA—The Clean Water Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 [33 U.S.C. 1251 *et seq.*], as amended by the Clean Water Act of 1977 [Pub. L. 95–217] and the Municipal Wastewater Treatment Construction Grant Amendments of 1981 [Pub. L. 97–117]

EPA—The United States Environmental Protection Agency

mgd—Million gallons per day

mg/l—Milligrams per liter

MCD–53—"Innovative and Alternative Technology Assessment Manual," [EPA 430/9–78–009, MCD–53, 1980]

NPDES permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act

POTW—Publicly owned treatment works

SS—Suspended solids

TF—Trickling Filter

WSP—Waste stabilization pond

1981 Amendments—The Municipal Wastewater Treatment Construction Grant Amendments of 1981 [Pub. L. 97–117]

Appendix B—Suspended Solids Limitations for Wastewater Treatment Ponds [1] [Source: 43 FR 55279, November 27, 1978]

Location	Suspended solids limit [2] (mg/l)
Alabama	90
Alaska	70
Arizona	90
Arkansas	90
California	95
Colorado:	
Aerated Ponds	75
All Others	105
Connecticut	N.C.
Delaware	N.C.
District of Columbia	N.C.
Florida	N.C.
Georgia	90
Guam	N.C.
Hawaii	N.C.
Idaho	N.C.
Illinois	37
Indiana	70
Iowa:	
Controlled discharge, 3 cell	(*)
All Others	80
Kansas	80
Kentucky	N.C.
Louisiana	90
Maine	45
Maryland	90
Massachusetts	N.C.
Michigan:	
Controlled seasonal discharge	
Summer	70
Winter	40
Minnesota	N.C.
Mississippi	90
Missouri	80
Montana	100
Nebraska	80
North Carolina	90
North Dakota:	
North and east of Missouri River	60
South and west of Missouri River	100
Nevada	90
New Hampshire	45
New Jersey	N.C.
New Mexico	90
New York	70
Ohio	65
Oklahoma	90
Oregon:	
East of Cascade Mts.	85
West of Cascade Mts.	50
Pennsylvania	N.C.
Puerto Rico	N.C.
Rhode Island	45
South Carolina	90
South Dakota	120
Tennessee	100
Texas	90
Utah	N.C.
Vermont	55
Virginia:	
East of Blue Ridge Mts.	60
West of Blue Ridge Mts.	78
East slope counties: Loudoun, Fauquier, Rappahannock, Madison, Green, Albemarle, Nelson, Amherst, Bedford, Franklin, Patrick	(*)
Virgin Islands	N.C.
Washington	75
West Virginia	80
Wisconsin	60
Wyoming	100
Trust Territories and N. Marianas	N.C.

[1] The values set for Iowa and Virginia incorporate a specific case-by-case provision; however, in accordance with 40 CFR 133.103(c), adjustments of suspended solids limitations for individual ponds in all States are to be authorized on a case-by-case basis.

[2] Thirty consecutive day average or average over the period of discharge when the duration of the discharge is less than 30 days.

[3] Case-by-case but not greater than 80.

[4] Case-by-case application of 60/78 limits.

Notes.—N.C.—No change from existing criteria.

Based on the reasons presented in the preamble, EPA proposes to revise 40 CFR Part 133 to read as follows:

PART 133—SECONDARY TREATMENT INFORMATION

Sec.

133.100 Purpose.
133.101 Definitions.
133.102 Secondary treatment.
133.103 Special considerations.
133.104 Sampling and test procedures.
133.105 Treatment equivalent to secondary treatment.

Authority: Sections 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501, Clean Water Act [Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981]; 33 U.S.C. 1311(b)(1)(B); 1314(d) (1) and (4); 1318; and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117.

§ 133.100 Purpose.

This part provides information on the level of effluent quality attainable through the application of secondary or equivalent treatment.

§ 133.101 Definitions.

For the purposes of this part, the following terms shall be defined as follows:

(a) *"7-day average."* The arithmetic mean of pollutant parameter values for samples collected in a period of 7 consecutive days.

(b) *"30-day average."* The arithmetic mean of pollutant parameter values for samples collected in a period of 30 consecutive days.

(c) *"Act."* The Clean Water Act (33 U.S.C. 1251 *et. seq.*, as amended).

(d) *"BOD_5."* The five day measure of the pollutant parameter biochemical oxygen demand (BOD).

(e) [Reserved].

(f) *"Effluent concentrations consistently achieved through proper operation and maintenance."* (1) For a given pollutant parameter, the 95th percentile value for the 30-day average effluent quality achieved by a treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and (2) a 7-day average value equal to 1.5 times the value derived under paragraph (f)(1) of this section.

(g) *"Facilities eligible for treatment equivalent to secondary treatment."* Treatment works shall be eligible for consideration for effluent limitations described for treatment equivalent to secondary treatment (§ 133.105), if:

(1) The BOD_5 and SS effluent concentrations consistently achieved through proper operation and maintenance (§ 133.101(f)) of the treatment works exceed the minimum level of effluent quality set forth in § 133.102(a) and § 133.102(b),

(2) A trickling filter or waste stabilization pond is used as the principal process, and

(3) The treatment works provide significant biological treatment of municipal wastewater.

(h) *"mg/l."* Milligrams per liter.

(i) *"NPDES."* National Pollutant Discharge Elimination System.

(j) *"Percent removal."* A percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the 30-day average values of the raw wastewater influent pollutant concentrations to the facility and the 30-day average values of the effluent pollutant concentrations for a given time period.

(k) *"Significant biological treatment."* The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of at least 65 percent removal of BOD_5.

(l) *"SS."* The pollutant parameter total suspended solids.

§ 133.102 Secondary treatment.

The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters—BOD_5, SS and pH. All requirements for each parameter shall be achieved except as provided for in §§ 133.103 and 133.105.

(a) *BOD_5:* (1) The 30-day average shall not exceed 30 mg/l.

(2) The 7-day average shall not exceed 45 mg/l.

(3) The 30-day average percent removal shall not be less than 85 percent.

(b) *SS:* (1) The 30-day average shall not exceed 30 mg/l.

(2) The 7-day average shall not exceed 45 mg/l.

(3) The 30-day average percent removal shall not be less than 85 percent.

(c) *pH.* The effluent values for pH shall be maintained within the limits of 6.0 to 9.0 unless the publicly owned treatment works demonstrates that: (1) inorganic chemicals are not added to the waste stream as part of the treatment process; and (2) contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

§ 133.103 Special Considerations.

(a) *Combined Sewers.* Treatment works subject to this part may not be capable of meeting the percentage removal requirements established under § 133.102(a)(3) and § 133.102(b)(3), or § 133.105(a)(3) and § 133.105(b)(3) during wet weather where the treatment works receive flows from combined sewers (*i.e.*, sewers which are designed to transport both storm water and sanitary sewage). For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal level can be defined, and if so, what the level should be.

(b) *Industrial wastes.* For certain industrial categories, the discharge to navigable waters of BOD_5 and SS permitted under sections 301(b)(1)(A)(i) or 306 of the Act may be less stringent than the values given in § 133.102(a)(1) and § 133.102(b)(1). In cases when wastes would be introduced from such an industrial category into a publicly owned treatment works, the values for BOD_5 and SS in § 133.102(a)(1) and § 133.102(b)(1) may be adjusted upwards provided that: (1) The permitted discharge of such pollutants, attributable to the industrial category, would not be greater than that which would be permitted under section 301(b)(1)(A)(i) or 306 of the Act if such industrial category were to discharge directly into the navigable waters, and (2) the flow or loading of such pollutants introduced by the industrial category exceeds 10 percent of the design flow or loading of the publicly owned treatment works. When such an adjustment is made, the values for BOD_5 or SS in § 133.102(a)(2) and § 133.102(b)(2) should be adjusted proportionately.

(c) *Waste Stabilization Ponds.* The Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in §§ 133.105 (b)(1), (b)(2), and (b)(3) for treatment works subject to this part, to conform to the SS concentrations achievable with waste stabilization ponds, provided that: (1) Waste stabilization ponds are the sole process used for secondary treatment; and (2) operation and maintenance data indicate that the SS values specified in §§ 133.105 (b)(1), (b)(2), and (b)(3) cannot be achieved. The term "SS concentrations achievable with waste stabilization ponds" means a SS value, determined by the Regional Administrator, or, if appropriate, State Director subject to EPA approval, which is equal to the effluent concentration achieved 90 percent of the time within a State or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality for BOD_5 specified in § 133.105(a)(1). [cf. 43 FR 55279]

§ 133.104 Sampling and test procedures.

(a) Sampling and test procedures for pollutants listed in this part shall be in accordance with guidelines promulgated by the Administrator in 40 CFR Part 136.

(b) Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for BOD_5 when a long-term BOD:COD or BOD:TOC correlation has been demonstrated.

§ 133.105 Treatment equivalent to secondary treatment.

This section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (§133.101(g)) in terms of the paramenters—BOD_5, SS and pH. All requirements for the specified parameters in paragraphs (a), (b), and (c) of this section shall be achieved except as provided for in § 133.103, and paragraphs (d) and (e) of this section.

(a) *BOD_5.* (1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(b) *SS.* Except where SS values have been adjusted in accordance with § 133.103(c):

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(c) *pH.* The requirements of § 133.102(c) shall be met.

(d) *Alternative State Requirements.* Except as limited by paragraph (e) of this section, the Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of this section for trickling filter facilities and in paragraphs (a)(1) and (a)(2) of this section for waste stabilization pond facilities, to conform to the BOD_5 and SS effluent concentrations consistently achieved through proper operation and maintenance (§ 133.101(f)) by the median (50th percentile) facility in a representative sample of facilities within a State or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)).

(e) *Permit Adjustments.* (1) For existing facilities, no effluent limitations established under this section shall be less stringent than the 30-day average and 7-day average BOD_5 and SS effluent values achieved through proper operation and maintenance of the treatment works, based on an analysis of the past performance of the treatment works.

(2) For new facilities, no effluent limitations established under this section shall be less stringent than the 30-day average and 7-day average BOD_5 and SS effluent values achieved through proper operation and maintenance of the treatment works, as determined by a registered engineer's best professional judgment of the design capability of the treatment process, taking into account geographical and climatic conditions.

[FR Doc. 83-30728 Filed 11-15-83; 8:45 am]
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40 CFR Part 133

[WH-FRL-2428-7]

Secondary Treatment Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes amendments to the secondary treatment information regulation to reflect experienced gained in the secondary treatment program by both EPA and the States. The proposed change would allow National Pollutant Discharge Elimination System (NPDES) permitting authorities the option of substituting the carbonaceous biochemical oxygen demand, five day ($CBOD_5$) pollutant parameter for the biochemical oxygen demand, five day (BOD_5) pollutant parameter. Where the five day $CBOD_5$ parameter is used, the oxygen demand from secondary treatment would be defined as a level of effluent quality that does not exceed an average five day $CBOD_5$ concentration of 25 milligrams per liter (mg/l) in a period of 30 consecutive days and 40 mg/l in a period of 7 consecutive days (proposed § 133.102(a)(4)). The Agency expects that the $CBOD_5$ parameter will be applied selectively for those cases where it will correct unintended inaccuracies in BOD_5 test results.

Pursuant to the "Municipal Wastewater Treatment Construction Grant Amendments of 1981" (referred to hereafter as the 1981 Amendments), EPA is also proposing, elsewhere in today's **Federal Register**, to amend 40 CFR Part 133 by defining a class of facilities (trickling filters (TFs) and waste stabilization ponds (WSPs) eligible for treatment equivalent to secondary treatment, by specifying a minimum level of effluent quality attainable by such facilities, and by setting forth procedures by which alternative State requirements may be developed (proposed § 133.105).

A separate five day $CBOD_5$ value has not been proposed for TFs and WSPs because adequate five day $CBOD_5$ data are not available for these processes. However, based on non-TF/WSP data, the Agency believes that $CBOD_5$ values of 40 mg/l (30-day average) and 60 mg/l (7-day) would be comparable to the proposed BOD_5 values of 45 mg/l (30-day average) and 65 mg/l (7-day). In Section IX of this preamble, the Agency is requesting comments and data to determine appropriate $CBOD_5$ values for facilities eligible for treatment equivalent to secondary treatment.

DATES: Written comments on this proposed rule must be received on or before January 16, 1984.

ADDRESSES: Comments should be addressed to: Central Docket Section [A-130], Attention: Docket No. G-83-01, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the record of this rulemaking and all comments received on this proposed rule at: Central Docket Section, Gallery 1, West Tower Lobby, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., business days.

FOR FURTHER INFORMATION CONTACT: Charles Mooar, Office of Water Program Operations [WH-595], Environmental Protection Agency, Washington, D.C. 20460; (202) 382-7276.

SUPPLEMENTARY INFORMATION: Information in this preamble is presented in the following order:

I. Introduction
- A. Statutory Authority and Previous Regulations
- B. Basis and Purpose of Proposal
- C. Summary of Proposal

II. Technical Discussion of Alternative Oxygen Demand Parameters for Secondary Treatment
- A. Oxygen-Demanding Pollutants in Municipal Wastewater
- B. Oxygen-Demand Considerations in the Design of Secondary Treatment Facilities and the Application of Secondary Treatment.
- C. Problems Arising from Use of BOD_5 Parameter
- D. Conclusions

III. Proposed $CBOD_5$ Effluent Limitations for Secondary treatment

IV. Sampling and Testing Procedures

V. Related rulemaking—40 CFR Part 133

VI. Consideration by Science Advisory Board

VII. Implementation
- A. Process for Revising NPDES Permits
- B. Water Quality Related Issues

VIII. Regulatory Impacts
- A. Executive Order 12991
- B. Paperwork Reduction Act.
- C. Regulatory Flexibility Act.

IX. Comments Invited

List of Subjects

Appendix A—Abbreviations, Acronyms and Terms Used in this Notice

I. Introduction

A. Statutory Authority and Previous Regulations

Section 301(b)(1)(B) of the Act, 33 U.S.C. 1311(b)(1)(B), requires that publicly owned treatment works (POTWs) achieve effluent limitations based upon secondary treatment as defined by the Administrator of EPA. Section 304(d)(1) of the Act, 33 U.S.C. 1314(d)(1), requires that the Administrator publish information on the degree of effluent reduction attainable through the application of secondary treatment within sixty days of enactment and from time to time thereafter. The authors of the provisions of Sections 301(b)(1)(B) and 304(d)(1) of the Act recognized that the understood meaning of the term "secondary treatment" defined a level of treatment for municipal wastewater that provided for the removal of organic matter and suspended solids. Thus, the Senate Committee Report and the House Committee Report for the 1972 Act state the following, respectively:

> In primary treatment of sewage, between 30 percent and 50 percent of *organic* pollution is removed. With secondary treatment between 50 percent and 90 percent is removed. *Leg. Hist.* at 1424. (emphasis added)
>
> Secondary treatment as considered in the context of a publicly-owned treatment works is generally concerned with suspended solids and biologically degradable, oxygen demanding materials (BOD). *Leg. Hist.* at 788.

The secondary treatment information regulation was promulgated on August 17, 1973 [38 FR 22298]. Generally, it established levels of effluent quality (§ 133.102) for the parameters 5-day biochemical oxygen demand (BOD_5), suspended solids (SS), fecal coliform bacteria, and pH. For the BOD_5 parameter, the regulation required the attainment of an average effluent concentration of 30 mg/l in a period of 30 consecutive days, an average effluent concentration of 45 mg/l in a period of 7 consecutive days, and an average of 85 percent removal in a period of 30 consecutive days (§ 133.102(a)). The regulation further provided that chemical oxygen demand (COD) or total organic carbon (TOC), which are both measures of the oxygen demand exerted by organic materials, could be substituted for BOD_5 where a long-term BOD:COD or BOD:TOC correlation has been demonstrated (§ 133.104(b)).

In support of the Agency's 1973 requirements for secondary treatment, performance data were collected for a sample of well designed and operated secondary treatment works for the pollutant parameters BOD_5, COD, phosphorus, ammonia-nitrogen (NH_3), and SS. In the support document for the 1973 regulations, it is stated that "organics, i.e., BOD_5 and COD, were specified (as pollutant parameters to be regulated), because secondary treatment systems have demonstrated that they can effectively treat them." Similarly, "nutrients (*i.e.*, phosphorus and NH_3) were not specified for inclusion, because secondary treatment, under normal conditions, does not effectively or consistently remove them" ("Effluent Limitations by the Application of Secondary Treatment," Contract No. 68–01–0346, November 1972, pp. 3, 10, 11).

B. Basis and Purpose of Proposal

The BOD_5 pollutant parameter (and its associated testing procedure) has been widely used to determine the operating efficiency and effluent qualtiy of wastewater treatment facilities. The oxygen demand for the BOD_5 parameter is primarily exerted through the metabolism of organic matter by carbonaceous bacteria (resulting in a carbonaceous biochemical oxygen demand or CBOD), although an additional nitrogenous oxygen demand (NOD) may also be exerted through the action of nitrogenous bacteria that oxidize ammonia nitrogen to nitrate in a two-stage process known as nitrification. Commonly accepted water quality modeling and analytic techniques used to justify the application of secondary treatment are based on controlling the oxygen demand due to the carbonaceous component of the organic material in the effluent, because, as noted in the legislative history and 1973 support document, secondary treatment facilities can effectively remove carbonaceous organic material, but may not consistently remove ammonia.

Although the exertion of a significant nitrogenous oxygen demand (NOD) in the 5-day BOD test was described in the technical literature as early as 1938, until recently the BOD_5 test was viewed as primarily a measure of the oxygen demand from carbonaceous organic matter (cf. existing regulation provisions allowing the substitution of COD or TOC for BOD). The assumption was supported by the classic two-stage oxygen demand curves found in standard textbooks and articles from the early 1920's through the present that reflect the expression of a CBOD in the first ten days, followed by the beginning of a NOD demand at between 10 to 12 days. Thus, a 5-day measure of BOD could be expected to represent an oxygen demand attributable primarily to CBOD.

Problems have arisen with the use of the BOD_5 test in many newer municipal secondary facilities. When sufficient numbers of nitrifying bacteria are present in the test sample, they can exert a significant NOD in the BOD_5 test that would not be exerted in their absence. Since many of the factors conducive to improved secondary effluent quality are also conducive to the growth of nitrifying bacteria, the BOD_5 test can erroneously indicate poorer effluent quality when effluent quality and plant performance have improved. The phenomenon can occur in many newer secondary facilities that are initially organically underloaded. The Agency is aware that some facilities are being intentionally operated in a mode that inhibits the growth of nitrifying bacteria to improve BOD_5 test results and compliance with secondary requirements. Such measures to inhibit nitrification in facilities usually result in poorer effluent quality (although BOD_5 test results indicate the opposite) and may often result in greater sludge production and higher operation and maintenance costs.

Alternative BOD testing procedures have been developed in recent years to correct for unintended measurement of NOD in the BOD_5 test. The use of a nitrification inhibiting agent was described in *Standard Methods of the Examination of Water and Wastewater*, 15th ed. (American Public Health Association, Washington, D.C. 1980). The nitrification inhibited BOD_5 test, or carbonaceous biochemical oxygen demand ($CBOD_5$ test, allows the oxygen demand due to metabolization of carbonaceous organic matter to be expressed, but eliminates any extraneous measurement of NOD. (The inhibition of nitrification occurs by effectively blocking the conversion of ammonia to nitrate, without affecting the activity of the carbonaceous organisms.) As a result, a $CBOD_5$ test can be expected to provide a more consistent basis for evaluating plant performance and effluent quality. In December 1979 [44 FR 69464], the Agency proposed amendments to the pollutant sampling and testing procedure regulation (40 CFR Part 136), which, among other things, included testing procedures for measuring 5-day carbonaceous biochemical oxygen demand ($CBOD_5$) based on the *Standard Methods* procedures.

Concurrently, the Agency initiated an examination of the desirability of using the $CBOD_5$ test in lieu of the standard BOD_5 test to monitor compliance with secondary treatment provisions. EPA identified a number of issues and regulatory options, including changes that would specify secondary treatment

effluent limitations in terms of $CBOD_5$. Notice of proposed amendments of 40 CFR Part 133 has been given in EPA's Regulatory Agenda since October 1981 [cf. 46 FR 53990, 47 FR 15703, 47 FR 48726, 48 FR 18487].

As noted above, the existing regulation § 133.104(b)) already allows substitution of various organic or carbonaceous oxygen demand parameters (COD and TOC) for BOD_5 where a long term BOD:TOC or BOD:COD relationship has been demonstrated. The Agency is proposing to allow substitution of the $CBOD_5$ parameter for the BOD_5 parameter, because it believes that this parameter and suggested $CBOD_5$ effluent concentrations are a better reflection of the understood meaning of secondary treatment in terms of measuring the removal of carbonaceous organic materials by secondary treatment for certain POTWs. In addition, the Agency believes that implementation of $CBOD_5$ test procedures should eliminate the counter-productive operating practices that were noted above since incidental nitrification will no longer affect test results.

In allowing substitution of the $CBOD_5$ parameter for the BOD_5 parameter, relaxation in the current levels of treatment mandated for secondary facilities should not be allowed. To ensure that the level of technology used for secondary treatment will remain essentially the same, analyses were conducted to determine if appropriate adjustments should be made to account for the differences in the measurement of oxygen demand by the two test procedures. Analyses of effluent data from critical design condition periods, i.e., winter months, show that BOD_5 and $CBOD_5$ test results exhibit an average difference in the range of 3 to 5 mg/1 when effluent BOD_5 is 30 mg/1. Based on the observed differences between the two tests, it is considered appropriate to establish a $CBOD_5$ effluent requirement of 25 mg/1. Since secondary facility design is typically based on winter conditions, and a 25 mg/1 $CBOD_5$ test result is comparable to a 30 mg/1 BOD_5 test result, no changes in treatment plant operation or facility design resulting in less stringent levels of treatment should occur.

C. Summary of Proposal

This proposed rulemaking (40 CFR 133.102(a)(4)) will provide NPDES permitting authorities the option of substituting the pollutant parameter $CBOD_5$ for the pollutant parameter BOD_5 in NPDES permits for secondary treatment facilites. In substituting the $CBOD_5$ parameter for the BOD_5 parameter, the effluent concentrations specified in existing paragraphs 133.102 (a)(1) and (a)(2) for BOD_5 would be replaced with average $CBOD_5$ effluent concentrations of: (1) 25 mg/l in a period of 30 consecutive days (proposed § 133.102(a)(4)(i)); and (2) 40 mg/l in a period of 7 consecutive days (proposed § 133.102(a)(4)(ii)). Sampling and testing procedures for the $CBOD_5$ parameter will be in accordance with approved procedures in 40 CFR Part 136. As mentioned above, in December 1979 EPA proposed amendments to 40 CFR Part 136 to include approved procedures for testing $CBOD_5$. Final rulemaking for 40 CFR Part 136 is expected shortly.

Elsewhere in today's **Federal Register**, the Agency is proposing amendments to 40 CFR Part 133 to implement changes required by the 1981 Amendments. Those proposed changes would define a class of facilities eligible for treatment equivalent to secondary treatment, specify a minimum level of effluent quality attainable by such facilities, and set forth procedures by which alternative State requirements may be developed (proposed § 133.105). The Agency has not proposed separate $CBOD_5$ values for facilities eligible for treatment equivalent to secondary treatment because adequate and sufficient $CBOD_5$ effluent data for trickling filter (TF) and waste stabilization pond (WSP) facilities are not available. However, based on regression analysis of data from non-TF/WSP facilities, EPA believes that $CBOD_5$ values of 40 mg/l (30-day average) and 60 mg/l (7-day average) would be comparable to the proposed BOD_5 values of 45 mg/l (30-day average) and 65 mg/l (7-day average) for facilities eligible for treatment equivalent to secondary treatment. (For a 7-day average, the Agency believes that a $CBOD_5$ value of 60 mg/l would be comparable to the proposed 65 mg/l BOD_5 value.) To determine whether these values or other values are appropriate, in Section IX of this preamble the Agency requests comments and parallel $CBOD_5$ and BOD_5 data for TFs and WSPs. The Agency expects to promulgate appropriate $CBOD_5$ values for facilities deemed equivalent to secondary treatment, based on available data.

II. Technical Discussion of Alternative Oxygen Demand Parameters for Secondary Treatment

A. Oxygen Demanding Pollutants in Municipal Wastewater

The biochemical oxygen demand (BOD) of wastewater is one of the most fundamental considerations in the water pollution control field. It is used to determine the treatment requirements of wastewater, to design treatment facilities, to assess treated effluent pollution potential, to measure operational performance of facilities, and to estimate the impact of treated wastewaters on the oxygen resources of receiving waters.

The BOD_t of wastewater is simply the amount of oxygen used by microorganisms in metabolizing (consuming) wastewater constituents during a specified time period (t). Two distinct components of BOD exist in municipal wastewaters. The carbonaceous BOD (CBOD) component represents the amount of oxygen consumed by various microorganisms in metabolizing organic (carbon) matter in the wastewater. The nitrogenous oxygen demand (NOD) represents the oxygen consumed by other types of bacteria (*Nitrosomonas* and *Nitrobacter* bacteria, or "nitrifiers") in converting ammonia to nitrite and then to nitrate, a process known as nitrification. The sum of the two components is known as the ultimate oxygen demand (UOD); by definition, the ultimate BOD equals the UOD, which is equal to CBOD plus NOD.

UOD can be measured by providing a sufficient time period (20–30 days) to allow complete oxidation of all oxidizable materials by both carbonaceous microorganisms and nitrifying bacteria. More practically, UOD can also be calculated on a theoretical basis by using $CBOD_5$ results (where t = 5 days) and ammonia-nitrogen concentrations. For the carbonaceous fraction, first-order reaction kinetics indicate that about two-thirds of the CBOD will be exerted within five days. Thus, the ultimate CBOD ($CBOD_u$) is approximately 1.5 times the five day value, *i.e.*, $CBOD_u = 1.5\ CBOD_5$.

In the nitrification process, for every mg/l of ammonia nitrogen (NH_3-N) converted to nitrate by nitrifying bacteria, about 4.6 mg of oxygen is theoretically consumed, *i.e.*, ultimate NOD (NOD_u) = 4.6 times NH_3-N. Since UOD equals $CBOD_u$ plus NOD_u, the UOD is equal to (1.5 times $CBOD_5$) + (4.6 times NH_3-N).

In typical situations, the UOD of wastewater will be exerted in a two-staged process, in which the carbonaceous demand is largely exerted before the oxygen consumed by nitrification becomes significant. This two-stage process typically occurs because the carbonaceous microorganisms represent a pervasive, diverse, and rapidly growing population,

which readily consume organic matter, whereas the nitrification process is carried out by very specialized bacteria, which are slow-growing and generally present in wastewater only in small numbers. The typical time required to double a population of nitrifying bacteria is one day, while a typical time for doubling a population of carbonaceous microorganisms is usually one to two hours.

B. Oxygen Demand Considerations in the Design of Secondary Treatment Facilities and the Application of Secondary Treatment

Biological wastewater treatment facilities achieve a reduction in oxygen-demanding materials by utilizing the activities of bacteria and other microorganisms as part of the treatment process. In most cases, the wastewater treatment processes are designed and operated to maintain a relatively stable population of microorganisms and to remove reliably specific oxygen-demanding materials.

Table 1 illustrates levels of pollutant reduction typically achieved in applying primary treatment, secondary treatment, and nitrification processes. For untreated domestic wastewater, the largest source of oxygen-demanding materials (approximately 75%) is carbonaceous in nature. As shown in Table 1, most of the carbonaceous material is removed during the application of secondary treatment. These materials are metabolized by carbonaceous microorganisms.

Although a small amount of nitrogenous material is also consumed as a nutrient, most of the residual oxygen-demanding materials in secondary effluent is nitrogenous in nature. Additional facilities beyond secondary, *e.g.*, a nitrification process, are usually designed when it is desirable to remove these remaining materials. (As noted in Section II C of this preamble, nitrification with attendant nitrogen-ammonia oxidation may also occur in certain secondary treatment facilities, although secondary treatment processes are not generally designed for this purpose.)

TABLE 1.—TYPICAL INFLUENT AND EFFLUENT WATEWATER CHARACTERISTICS

(All values in milligrams per liter)

Type	$CBOD_5$	$CBOD_\mu$	NH_3-N	NOD_μ	UOD
Influent	200	300	20	92	392
Primary	130	195	20	92	287
Secondary	20–30	30–45	12–18	55–83	85–128
Nitrification	5–10	10–15	2	9	19–26

Design practices and operating procedures for secondary treatment facilities are based primarily on carbonaceous microorganisms metabolizing the carbonaceous fraction (CBOD) of the wastewater. Design equations for secondary treatment are based on carbonaceous oxidation in regard to sluge production, solids inventory, air requirements and effluent residuals [cf. Water Pollution Control Federation and American Society of Civil Engineers, "Wastewater Treatment Plant Design," (Lancaster press, Lancaster, PA), 1977; Metcalf and Eddy, Inc., "Wastewater Engineering: Collection, Treatment, Disposal," (New York: McGraw-Hill), 1972]. Where biological treatment is proposed to achieve secondary treatment levels, the use of intentional nitrification is not usually recommended. This process may adversely affect sludge settling and other desirable sludge characteristics. Also, the additional capital costs to provide sufficient detention times or aeration to sustain adequate populations of nitrifying bacteria can be significant. Standard design practices for secondary treatment facilities thus encourage oxidation and removal of only carbonaceous organic material.

The focus on CBOD in the design and operation of secondary treatment facilities directly contrasts with design and operation of most advanced treatment facilities, where both CBOD *and* NOD reduction is desired. In advanced treatment, the design of the facility will often maximize nitrification in the treatment process, and the design equations for the treatment processes will take into account the oxygen demands from both CBOD and NOD.

The impact of NOD on the dissolved oxygen in the receiving waters is an important factor in evaluating the need for advanced treatment. If the use of secondary treatment is sufficeint for attainment of the water quality standards, then the receiving waters are classified as effluent limited. In such cases, a wasteload allocation, modeling outupt, or other water quality analyses should have determined that the potential NOD impacts of the municipal discharge on dissolved oxygen in the receiving waters will not violate water quality standards. When the effluent exerts sufficient NOD to lower dissolved oxygen levels below established limits, advanced treatment, usually nitrification, will be required in addition to secondary treatment. In these cases, receiving waters are classified as water quality limited.

Based on the above considerations, the CBOD parameter represents the best measure of oxygen-demanding materials in secondary effluent and efficiency of a secondary treatment process. Since standard engineering practices for design and operation of secondary treatment facilities usually minimize nitrification, and since the practice of classifying receiving waters as effluent limited obviates the need for amonia nitrogen control, the Agency believes that the control and measurement of effluent NOD is largely an incidental byproduct for certain biological secondary treatment facilities.

C. Problems Arising from Use of BOD Parameter

Since 1973 the Agency has specified BOD_5 as the parameter for limiting the oxygen demand in municipal wastewater influents and effluents. Although the parameter BOD_5 can include both a CBOD and an NOD fraction, until a few years ago this was generally not viewed as a problem in monitoring the effluent quality of a secondary treatment facility.

An noted above, the design of secondary treatment facilities inherently minimizes the growth of nitrifiers. Thus, under most circumstances, the effluent sample from secondary treatment facilities at or near design loadings will contain small numbers of nitrifying bacteria. This is especially true during cold weather months when nitrifier growth rates are minimal.

In a standard BOD test (5-day incubation at 20°C, 7.2 pH), the degree of NOD exerted will depend upon the population of nitrifying bacteria that are initially present in the sample. The 5-day period is generally too short for growth of the small initial population of nitrifying bacteria normally present in secondary effluents to numbers sufficient to exert a significant NOD. Under these conditions little of the ultimate NOD will be exerted during a 5-day test; therefore, the BOD_5 test will primarily measure the carbonaceous biochemical oxygen demand.

A significant population of nitrifying bacteria may be present in the effluent sample if there is sufficient nitrifier growth in the wastewater treatment facility to cause incipient or partial nitrification. In these cases, a substantial portion of the NOD_μ may be exerted within the 5-day test. Thus, the standard BOD_5 test will measure both $CBOD_5$ and NOD, although the NOD parameter is irrelevant for most secondary treatment facilities.

Incipient, partial, or full nitrification can occur where a secondary treatment facility is designed based on overly conservative criteria, or the facility is

operating at levels below the design loadings. Although secondary treatment facilities have usually been designed without capacity for intentional nitrification, several factors such as pH, temperature, process type and mean cell residence time (MCRT) influence the activity rate and the population size of the nitrifying bacteria present in a wastewater effluent.

The most influential factor is the MCRT, which is an indicator of how long the bacterial population remains in the facility. Because nitrifying bacteria grow more slowly than carbonaceous bacteria, nitrifying bacteria require a longer MCRT in the treatment system than carbonaceous microorganisms to maintain large populations. Typically, municipal secondary facilities at design loadings have MCRTs too short for growth of sufficient nitrifying bacteria to oxidize significant amounts of ammonia either in the plant or the sample bottle.

Recently constructed secondary treatment facilities often provide for reserve capacities over a twenty-year planning period. These facilities are thus more likely than facilities at design conditions to have sufficient detention times and MCRTs to develop significant populations of nitrifying bacteria. In such cases, higher observed BOD_5 test results, compared to those for facilities operated near design loadings, are common despite improved effluent quality (as measured by effluent CBOD and ammonia). This results from several factors, including longer retention times, that cause improved carbonaceous effluent quality and at the same time, enhance the growth of nitrifying populations. These observations would suggest that the continued use of the BOD_5 parameter and test for underloaded plants may cause inaccurate measurement of effluent quality and plant performance. Since nitrification in the treatment process generally produces a better quality effluent than ordinary secondary treatment, EPA believes that the higher BOD_5 measure for the former is misleading.

Use of the BOD_5 parameter may give misleading results in attempting to compare the performance of different treatment facilities with similar influent wastewaters. In some cases, the BOD_5 tests performed on similar wastewater effluents, *e.g.*, same CBOD, ammonia, and UOD, will produce differing test results due to the influence of nitrifying bacteria in the sample. In other cases, comparative BOD_5 test may show results conflicting with the relative effluent qualities of the samples compared. These situations are illustrated in the hypothetical example provided in Table 2.

TABLE 2.—EFFLUENT CHARACTERISTICS

[All values in milligram per liter]

	Percent design flow	Nitrifier pop in sample	$CBOD_5$	Ammonia	UOD	BOD_5
Plant A	100	Insignificant	25	18	121	30
Plant B	80	Moderate	25	18	121	35
Plant C	50	Very large	10	10	61	45

Plant A would represent the situation of an older secondary treatment facility at 10 to 20 years after start-up of operations. Plant B would represent conditions that may occur when a new secondary treatment facility begins operations with a moderate reserve (20 percent of its design capacity) set aside for future flow increases. Plant C would represent rarer conditions, *e.g.*, in a rapidly growing area, where a new secondary treatment facility begins operations with a design capacity that is twice the existing flow.

Although Facility C is discharging the best level of effluent quality ($CBOD_5 = 10$ mg/l, $NH_3 = 10$ mg/l), the BOD_5 test results indicate that Facility C has the "poorest" effluent quality. Since the facility treats only 50 percent of design flow, its high MCRT has allowed growth of a large population of nitrifying bacteria. Similarly, based on BOD_5 test results, Plant B appears to be discharging more oxgen demanding materials than Plant A, even though the UOD effluent quality is the same for the two facilities.

In Plant C, substantial nitrification occurs in both the facility and the test. Plant B differs from Plant C because Plant B's flow more closely approaches its design flow and, as a result of its limited detention time, privides little nitrification. However, the MCRT for Plant B is just sufficient to establish a limited population of nitrifying bacteria (incipient nitrification). These bacteria oxidize sufficient ammonia in the test bottle to affect the test results for BOD_5. Since Plant A handles its design flow, significant populations of nitrifying bacteria are not present in the test bottle. Thus, the BOD_5 test measures only carbonaceous BOD even though substantial ammonia is present in the effluent.

D. Conclusions

Based on the above discussion, the Agency believes that the $CBOD_5$ parameter is the most appropriate and relevant parameter for measuring secondary treatment performance and level of effluent quality at certain POTWs. Although the BOD_5 parameter and test results may approximate the results for the $CBOD_5$ parameter in some situations, particularly cold weather, the exertion of a significant NOD in the test results for the BOD_5 parameter in other cases may result in misleading test results for a well-performing secondary treatment facility. Since the degree of NOD in the BOD_5 test results cannot be determined without performing a parallel $CBOD_5$ test or a test for the presence of nitrifying bacteria, the use of the $CBOD_5$ tests for measuring effluent quality and setting effluent limits is recommended to ensure accurate measurements of plant performance and a sound basis for treatment facility design.

The proposed use of the carbonaceous BOD parameter would be consistent with the provisions of existing regulation (§ 133.104(b)) which already allow the substitution of organic (carbonaceous) measures of the oxygen demand for secondary effluent. Under § 133.104(b) chemical oxygen demand (COD) or total organic carbon (TOC), which are both measures of a carbonaceous oxgen demand, can be substituted where a long term BOD:TOC or BOD:COD relationship has been demonstrated.

III. Proposed $CBOD_5$ Effluent Limitations for Secondary Treatment

As noted above, the significant differences between BOD_5 and $CBOD_5$ test results, where incipient or partial nitrification of secondary effluent is occurring, leads the Agency to propose the use of the $CBOD_5$ parameter in NPDES permits for POTWs at the option of the NPDES permitting authority.

It has also been noted that differences in BOD_5 and $CBOD_5$ test results may also occur in cases where populations of nitrifying bacteria are presumed to be low. Even though nitrifying populations may be decreased in a fully loaded secondary plant, compared to an underloaded facility, some populations of nitrifying bacteria may still exist, and this population may exert a small NOD

in the test bottle. Thus, the test results BOD_5 and $CBOD_5$ parameters will not necessarily be equivalent. These differences indicate that substitution of the $CBOD_5$ parameter for the BOD_5 parameter without a change in the effluent limitations to account for any residual NOD exertion may be inappropriate.

The Agency also recognizes that secondary treatment often results in incidental benefits from control of other pollutants. For example, although secondary treatment is not intended to reduce ammonia nitrogen, secondary treatment often incidentally removes some ammonia nitrogen. In proposing the substitution of $CBOD_5$ for BOD_5, the Agency has conducted analyses to ensure that a comparable level of effluent quality is required for secondary treatment facilities if either BOD_5 or $CBOD_5$ tests are used.

The Agency analyzed parallel BOD_5 and $CBOD_5$ data from secondary treatment facilities achieving at least the existing 30 mg/l requirements for BOD_5 to determine the corresponding $CBOD_5$ effluent concentrations. The objective of the analysis was to determine the average NOD in the BOD_5 test under design conditions. This avarage NOD could then be deducted from BOD_5 effluent limitations for secondary treatment facilities to determine appropriate $CBOD_5$ limits.

To assess the NOD exertion, the Agency compared 82 months of winter effluent BOD_5 and $CBOD_5$ values from 26 secondary treatment facilities. Data points for the selected facilities reflect their performance during critical design conditions, *i.e.,* when the discharge approximate design flows during cold weather periods. Under these circumstances, a low population of nitrifying bacteria in each effluent sample was assumed. Since nitrification may occur under critical design conditions for overdesigned secondary treatment facilities, such facilities were eliminated from the data base whenever data for a facility indicated occurrence of significant nitrification.

The Agency used linear regression analyses where the best fit of the data was expressed in terms of a linear equation in the form of $Y=A+BX$. The term A accounts for a constant residual shift of the line upward or downward, while the term B describes the slope of the line. An index of determination (R^2) for the regression provided a measure of the closeness of fit. A value of $R^2=1.0$ is interpreted as a perfect fit, whereas a value of $R^2=0$ shows that there is no fit.

Several different regression analyses of the data set yielded R^2 values ranging from .89 to .93 for linear functions of 82 monthly average data points. Therefore, the analyses show a close relationship between observed BOD_5 and $CBOD_5$ values for the sample facilities where small populations of nitrifying bacteria would be expected. The regression analyses show that $CBOD_5$ values can be predicted in terms of corresponding BOD_5 values on the regression line. For a BOB_5 value of 30 mg/l, the various regressions predict $CBOD_5$ values ranging from 24–27 mg/l.

In a separate analysis of parallel BOD_5 and $CBOD_5$ effluent data from comparable well operated and designed secondary facilities, a median difference between $CBOD_5$ and BOD_5 of 4 mg/l was shown when BOD_5 values were 30 mg/l. Another study indicates that, typically, $CBOD_5$ values will be about .70–.85 of effluent TSS values. Based on that study, if effluent TSS is 30 mg/l, the corresponding effluent $CBOD_5$ values would range from 20–25 mg/l. Both of these studies are consistent with the regression analyses described above.

Based on the above regression analyses, the Agency proposes that the $CBOD_5$ effluent limitations be set at 25 mg/l on a 30-day average. Application of the same analyses for 7-day effluent values shows that the 45 mg/l BOD_5 value will correspond to a $CBOD_5$ value in a range of 38 mg/l to 40 mg/l. The Agency proposes that the $CBOD_5$ effluent limitations for a 7-day average be set at 40 mg/l.

The Agency has not proposed an across-the-board mandatory substitution of the $CBOD_5$ for the BOD_5 parameter because it believes that problems arising from the use of the BOD_5 parameter may not be experienced in all cases, and that rewriting of all NPDES permits for secondary treatment could impose substantial resource burdens. Furthermore, some States may be concerned that use of the $CBOD_5$ parameter and testing procedures could cause discontinuity in their data bases on municipal effluent quality, or that the impact of NOD on receiving waters would require further study before any decision could be made to use $CBOD_5$. Considering these concerns about resource impact and State management of water quality programs, EPA is proposing that the NPDES authority substitute the $CBOD_5$ parameter for the BOD_5 parameter when it deems such substitution appropriate.

IV. Sampling and Testing Procedures

The existing secondary treatment regulation requires the use of sampling and testing procedures in accordance with 40 CFR Part 136. As noted above, the Agency has proposed the addition of a $CBOD_5$ test to the list of EPA approved procedures [44 FR 69464]. Promulgation of the revised 40 CFR Part 136 is expected shortly. Both the preamble and cited references for the proposed rulemaking for 40 CFR Part 136 describe the test procedure for $CBOD_5$ and is rationale.

The current 40 CFR Part 136 includes procedures that are specified in the publication *Standard Methods for the Examination of Water and Wastewater. Standard Methods* has long been recognized as a basic reference for laboratory test methodologies conducted on wastewater treatment samples, and is periodically revised to reflect improvements in testing procedures. The fifteenth edition of *Standard Methods* recommends that BOD_5 tests performed on secondary effluents or samples seeded with secondary effluents use a nitrification inhibitor to properly measure the $CBOD_5$ of the effluent. The December 1979 notice of proposed rulemaking for 40 CFR Part 136 noted this change by proposing the addition of an inhibited $CBOD_5$ test to the Agency's list of approved testing procedures. The inhibitor used in the Standard Methods test and recommended for inclusion in 40 CFR Part 136 is 2-chloro-6 (trichloromethyl) pyridine (TCMP).

V. Related Rulemaking—40 CFR Part 133

Based on Pub. L. 97–117 (the 1981 Amendments), the Agency is proposing changes that would deem certain trickling filter (TF) and waste stabilization pond (WSP) facilities as facilities eligible for consideration as equivalent to secondary treatment. That proposed rule would specify a minimum level of effluent quality attainable by such facilities, but would allow an EPA Regional Administrator, or a State Director subject to EPA approval, to adjust the minimum level of effluent quality within a State or appropriate contiguous geographical area, based on an assessment of the performance of such facilities.

For the oxygen demand parameter the Agency is proposing that a 30-day average BOD_5 effluent concentration of 45 mg/l is attainable by eligible facilities. Where facilities considered potentially eligible for permit adjustments under proposed § 133.105 (see proposal elsewhere in today's **Federal Register**) have encountered problems due to nitrification in BOD_5 test results, parallel $CBOD_5$ and BOD_5 tests should be considered. In Section IX of this preamble the Agency requests parallel data for TF and WSP facilities in order to assess the appropriate

$CBOD_5$ value that should be established under proposed § 133.105(a).

VI. Consideration by Science Advisory Board

On a regular basis, EPA's Science Advisory Board (SAB) reviews technical issues relating to proposed regulations. At public meetings on November 29, 1982 [47 FR 5147], January 17, 1983 [48 FR 508], February 10–11, 1983 [48 FR 3652], and April 27, 1983 [48 FR 15535], the SAB considered issues of whether the use of the $CBOD_5$ parameter and test would provide a better measure of effluent quality from secondary POTWs, and whether effluent limitations for such POTWs should be adjusted if the $CBOD_5$ parameter is used. Comments of the SAB were considered in developing this proposal and are available for public inspection at the location noted in the **ADDRESSES** section at the beginning of this document.

VII. Implementation

A. Process for Revising NPDES Permits

Under this proposed rule, NPDES permitting authorities would be allowed to substitute the $CBOD_5$-based effluent concentrations and testing procedures in place of current BOD_5 requirements in secondary treatment NPDES permits. Of course, actual permit changes will have to await promulgation of these proposed changes. Due to the large number of municipal permits that could be potentially impacted by this proposed rule, the preferred method of implementation would be to revise the permit limitations at the time of normal permit reissuance.

Elsewhere in today's **Federal Register**, the Agency is proposing changes to the NPDES Permit Regulations (40 CFR 122.62) that would allow municipalities to request permit modification prior to reissuance. Therefore, if the changes to 40 CFR 122.62 are published as a final rule, permittees who wish to request modification prior to reissuance may do so, but must submit their requests for modification within 90 days of the publication date for the final secondary treatment regulation (cf. § 122.6(a)(3)(i)(C)).

B. Water Quality Related Issues

As noted in Section II of this preamble, permit writers must determined whether treatment more stringent than secondary treatment is needed to achieve water quality standards. If a State or NPDES permitting authority determines that State water quality standards for the receiving water would be violated by a discharge of secondary effluent, then treatment more stringent than secondary treatment will be required. With or without this proposed rule, States would use similar procedures to determine that the receiving water is indeed effluent limited, *e.g.*, NOD is not causing water quality violations. Where concerns exist that the NOD present in secondary effluent may result in adverse effects on water quality and designated uses of receiving waters, the State should consider whether the stream classification should be changed from effluent limited to water quality limited.

This proposed rule would apply only to those cases where the technology-based standard of secondary treatment was considered and found to be sufficient to protect water quality and ensure compliance with water quality standards. Where concerns exist that a discharge of 30 mg/l BOD_5 or 25 mg/l $CBOD_5$ on a 30-day average would result in a pollutant load that would affect water quality and designated uses of receiving waters, the State should be changed from effluent limited to water quality limited.

VIII. Regulatory Impacts

A. Executive Order 12291

Under Executive Order (E.O.) 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulation impact analysis requirements of the Order or whether it may follow other development procedures. The Agency has determined that this proposed regulation is not a major rule within the scope of E.O. 12291. This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review as required under E.O. 12291.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit a copy of any proposed rule which contains a collection of information requirements to the Director of OMB for review and approval. The Agency has determined that this proposed rulemaking contains no new information collection requirements. Comments on the Agency's determination may be sent to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer, EPA. The final rule will explain how the Agency has responded to any OMB or public comments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA to assess the impact of its regulatory proposals on "small entities." No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Under today's proposed rule, only minimal additional costs over those for the BOD_5 test would result from the use of inhibiting agents required in the $CBOD_5$ test. The use of the $CBOD_5$ parameter and testing procedures, however, may result in substantial capital or operation and maintenance cost savings at some locations. By using the $CBOD_5$ parameter and testing procedures, some communities may be able to demonstrate that planned treatment facility upgradings are in fact unnecessary. Furthermore, the Agency expects that some communities will also realize benefits from the use of $CBOD_5$ through more accurate measurements of effluent quality and elimination of the incentive to operate plants in a counter-productive manner to meet BOD_5 limits, *i.e.*, prevention of nitrification in facilities.

Thus, the Agency believes that today's proposal will not result in any significant adverse economic impact on small communities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this amendment will not have a significant impact on a substantial number of small entities.

IX. Comments Invited

The Agency urges interested individuals to submit comments on the proposal set forth in this notice. All comments received within 60 days will be considered in this rulemaking. EPA particularly requests comments and/or data on the proposed effluent limitations for $CBOD_5$. In order to fully analyze comments received, the Agency solicits data for fully loaded municipal facilities that are achieving secondary treatment requirements, and that such submittals include the following:

(1) A record of effluent data, preferably daily, for BOD_5, $CBOD_5$, NH_3–N, and SS during a period of at least 6 months,

(2) Information on the treatment process, including design flow and loading, actual flow and loading, mean cell residence times, and any operational procedures undertaken to minimize the effect of nitrification, and

(3) Information on the type and amount of nitrification inhibitor used to obtain the reported $CBOD_5$ values.

If data are available, the Agency is interested in obtaining information on the soluble fraction of the reported BOD_5 and $CBOD_5$ values.

In response to the 1981 Amendments to the Clean Water Act, the Agency is proposing (elsewhere in today's **Federal Register**) a 30-day average BOD_5 value of 45 mg/l as an effluent concentration attainable by TF and WSP facilities deemed equivalent to secondary treatment. (A 7-day average BOD_5 value of 65 mg/l is also proposed.) The Agency has not proposed separate $CBOD_5$ values for such facilities because adequate and sufficient $CBOD_5$ effluent data for TF and WSP facilities are not available. Based on regression analysis of non-TF/WSP data, the Agency believes that a $CBOD_5$ value of 40 mg/l would be comparable to a BOD_5 value of 45 mg/l (30-day average). (For the 7-day average, the expected $CBOD_5$ value would be 60 mg/l.) To determine whether these $CBOD_5$ values or other values are appropriate, the Agency requests parallel BOD_5 and $CBOD_5$ data for TF and WSP facilities. The Agency expects to promulgate appropriate $CBOD_5$ values for facilities deemed equivalent to secondary treatment, based on available data. Accordingly, the public should submit comments on this issue at this time.

List of Subjects in 40 CFR Part 133

Publicly owned treatment works, Waste treatment and disposal, Water pollution control.

Dated: November 4, 1983.

William D. Ruckelshaus,

Administrator.

Appendix A—Abbreviations, Acronyms and Terms Used in This Notice.

Act—The Clean Water Act
Agency—The United States Environmental Protection Agency
BOD—A pollutant parameter for the biochemical oxygen demand of wastewater, which typically includes both a carbonaceous and a nitrogenous portion
BOD_t—The BOD exerted in a given time period (t)
BOD_5—The BOD exerted in a 5-day period.
BODμ—The ultimate or long-term BOD of wastewater, which will be exerted if sufficient reaction time is allowed
CBOD—The carbonaceous portion of the BOD wastewater
$CBOD_t$—The CBOD exerted in a given time period (t)
$CBOD^5$—The CBOD exerted in a 5-day period
CBODμ—The ultimate or long-term CBOD of wastewater, which will be exerted if sufficient reaction time is allowed. Typically, CBODμ is equal to 1.5 times the $CBOD_5$
CWA—The Clean Water Act
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 [33 U.S.C. 1251 *et seq.*], as amended by the Clean Water Act of 1977 [Pub. L. 95–217] and the Municipal Wastewater Treatment Construction Grant Amendments of 1981 [Pub. L. 97–117].
EPA—The United States Environmental Protection Agency
MCRT—Mean cell residence time
MDG—Million gallons per day
mg/l—Milligrams per liter
NH_3-N—Ammonia nitrogen
NOD—The nitrogenous portion of the BOD of wastewater
NOD_t—The NOD exerted in a given time period (t)
NODμ—The ultimate or long-term NOD of wastewater, which will be exerted if sufficient reaction time is allowed. Typically, NODμ is equal to 4.6 times the NH_3-N
NPDES permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act
OMB—Office of Management and Budget
POTW—PUbvlicly owned treatment works
SAB—Science Advisory Board
SS—Suspended solids, a pollutant parameter
Standard Methods—Standard Methods for the Examination of Water and Wastewater, 15th ed. (American Public Health Association, Washington, D.C. 1980)
UOD—The ultimate oxygen demand of wastewater, typically BODμ
1981 Amendments—The Municipal Wastewater Treatment Construction Grant Amendments of 1981 [Pub. L. 97–117]

PART 133—[AMENDED]

Based on the reasons presented above, EPA proposes to amend 40 CFR Part 133 as follows:

The authority citation for Part 133 reads as follows:

Authority: Sections 301, 304, 308, 501, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117 (33 U.S.C. 1311; 1314; 1318; and 1361).

Section 133.102 is amended by adding paragraph (a)(4) to read as follows:

§ 133.102 Secondary treatment.

* * * * *

(a) * * *

(4) At the option of the NPDES permitting authority, in lieu of the parameter BOD_5 and the levels of effluent quality specified in paragraphs (a)(1), (a)(2), and (a)(3), the parameter $CBOD_5$ may be substituted with the following levels of $CBOD_5$ effluent quality provided:

(i) The 30-day average shall not exceed 25 mg/l.

(ii) The 7-day average shall not exceed 40 mg/l.

(iii) The 30-day average percent removal shall not be less than 85 percent.

* * * * *

[FR Doc. 83–30725 Filed 11–15–83; 8:45 am]
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40 CFR Part 122

[WH-FRL-2410-5]

National Pollutant Discharge Elimination System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise a permit program requirement for the National Pollutant Discharge Elimination System (NPDES). The proposal implements Section 23 of Municipal Wastewater Treatment Construction Grants Amendments of 1981 to the Clean Water Act and the revisions to the Secondary Treatment Information Regulation (40 CFR Part 133) proposed elsewhere in today's **Federal Register**. The proposal would allow NPDES permits to be modified or reissued to include less stringent limits based upon the revised secondary treatment requirements.

DATES: Comments on the proposed regulations must be received by January 16, 1984.

ADDRESSES: Interested persons should submit written comments on this proposal to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division [EN–336], Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Telephone: (202) 426–4793.

SUPPLEMENTARY INFORMATION: Section 301(b)(1) of the Clean Water Act (CWA) requires all publicly owned treatment works (POTWs) to achieve effluent limitations based upon secondary treatment or more stringent water quality standards. These effluent limitations are imposed in permits issued to dischargers under the National Pollutant Discharge Elimination System (NPDES). EPA and States approved to administer the NPDES Program have issued permits to existing POTWs with conditions based upon the secondary treatment definition in the existing Secondary Treatment Information Regulation (40 CFR Part 133). Elsewhere in today's **Federal Register**, EPA is proposing revisions to the secondary treatment requirements in Part 133 based upon section 23 of the "Municipal Wastewater Treatment Construction Grants Amendments of 1981" to the CWA. The CWA amendments deemed oxidation ponds, lagoons, and ditches and trickling filters to be the equivalent of secondary treatment and directed EPA to provide guidance on design

criteria for such facilities, taking into account pollutant removal efficiencies. The proposed Part 133 revisions would carry out this directive.

The current NPDES regulations do not authorize permits to be modified or reissued to incorporate changes to the secondary treatment requirements insofar as these may be less stringent than the existing permit effluent limitations. Section 122.44(1) prohibits reissuance of a permit upon expiration with any condition less stringent than those in the expiring permit unless cause for permit modification under § 122.62 exists. The current regulations do not provide any cause for permit modification that would allow less stringent permit limitations to be imposed based upon changes to the secondary treatment regulations. Thus, even if permittees would qualify for less stringent requirements as a result of today's proposed change to the secondary treatment requirements, the NPDES regulations would not allow implementation of the revision through changes to permit conditions.

EPA is, therefore, proposing to revise § 122.62(a)(3)(i) to allow a POTW to request permit modification to incorporate new effluent limitations in accordance with the revised Secondary Treatment Information Regulation. Under § 122.44(1), that change would also allow the Director to reissue a permit upon expiration with limitations less stringent than those in the expiring permit to the extent authorized by the revised secondary treatment standards. This proposal would thus make EPA's approaches to promulgated technology-based standards consistent for POTWs and for industrial dischargers. The current EPA policy in the NPDES regulations allows industrial permits to be modified or reissued at the permittee's request when EPA promulgates effluent limitations guidelines to replace previous guidelines on which the permit was based that were withdrawn, modified, or revised.

The revision proposed here is primarily procedural. Comments on the appropriate revisions to the Secondary Treatment Information Regulations should be submitted in response to the proposal for changing Part 133 published elsewhere in today's **Federal Register**.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed amendement will allow permittees to obtain less stringent limitations in their NPDES permits and will thereby reduce burdens, The regulation does not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA has submitted a copy of this proposed rule and supporting documents on a collection of information requirement to the Director of OMB for review and approval. Comments on EPA's proposed information collection requirement may be sent to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer, EPA.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed amendment would allow permittees to obtain less stringent effluent limitations and would therfore reduce costs and burdens for them. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this amendment will not have a significant impact on a substantial number of small entities.

List of subjects in 40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: November 4, 1983.

William D. Ruckelshaus,

Administrator.

It is proposed that 40 CFR Part 122 be amended as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Section 122.62 is proposed to be amended by revising paragraph (a)(3)(i)(A) as follows:

§ 122.62 Modification or revocation and reissurance of permits.

(a) * * *

(3) * * *

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Information Regulations under Part 133; and

* * * * *

[FR Doc. 83-30727 Filed 11-15-83; 8:45 am]
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Reader Aids

Federal Register

Vol. 48, No. 222

Wednesday, November 16, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

50295-50500.....1
50501-50698.....2
50699-50874.....3
50875-51140.....4
51141-51274.....7
51275-51424.....8
51425-51604.....9
51605-51764.....10
51765-51902.....14
51903-52024.....15
52025-52280.....16

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Notices:
November 4, 1983.....51277

Presidential Determinations:
No. 83-10 of September 30, 1983.....51607

Executive Orders:
April 15, 1910 (Revoked in part by PLO 6487).....50894
July 2, 1910 (See PLO 6487)
December 28, 1910 (Revoked in part by PLO 6487).....50894
January 24, 1914 (Revoked in part by PLO 6487).....50894
7594 (Revoked in part by PLO 6489).....50895
12170 (Continued by Notice of November 4, 1983).....51277
12448.....51281

Proclamations:
2417 (See PLO 6489).....50895
5123.....50699
5124.....51275
5125.....51279
5126.....51425
5127.....51605

5 CFR

534.....52025

7 CFR

2.....50875, 51141
29.....50501
371.....50295
905.....51765
906.....50501
907.....51609
910.....50701, 50877, 51634
927.....52027
931.....52027
966.....52027
971.....52027
989.....52028
1290.....51427
1421.....51765

Proposed Rules:
42.....51635
225.....50743
400.....51635
424.....52067
436.....51638
1036.....50549
1290.....52071
1488.....51490
1910.....51312
1924.....51312
1930.....51312
1941.....51312
1945.....51312

8 CFR

100.....52029
103.....51142, 51430
109.....51142
214.....51283
238.....51431, 52029

9 CFR

81.....51422
92.....50701, 52030
327.....50296

10 CFR

50.....50878
71.....51903
95.....51903
761.....50296

Proposed Rules:
2.....50550
50.....50746
51.....50746
211.....50824
440.....51068

11 CFR

114.....50502

12 CFR

26.....50296
30.....51283
212.....50296
220.....51768
330.....52030
348.....50296
563f.....50296
711.....50296

Proposed Rules:
Ch. III.....50746
304.....51155
330.....50339
336.....51317
337.....50339
349.....51155
563.....51270
564.....50339
571.....51270

13 CFR

Proposed Rules:
111.....51642

14 CFR

39.....50508, 50879-50886, 51287, 51431, 51432

71.....50510, 50887, 51433–51436, 51903–51905
75.....50510
91.....50510
97.....50512, 51609
159.....51416
211.....51288
385.....51144

Proposed Rules:
Ch. I.....50553
21.....52010
23.....52010
36.....52010
39.....50341, 50899
91.....52010
135.....52010
380.....50900
399.....50900

16 CFR
13.....50702–50704, 51768, 51769
1017.....50514
1406.....50705

17 CFR
33.....51288
145.....50887
211.....51769
275.....50526

Proposed Rules:
3.....50554
10.....50554
230.....51155, 51328
240.....51930

18 CFR
157.....51436
271.....51446, 52031

19 CFR
111.....51288
191.....52031

Proposed Rules:
10.....50342
19.....50342
24.....50342
113.....50342
125.....50342
141.....50342
142.....50342
143.....50342
144.....50342
146.....50342
151.....51784

20 CFR
200.....51447
202.....51447
250.....51447
259.....51447
260.....51447
262.....51447
350.....51447
362.....51447
363.....51447
396.....50308
602.....50662
603.....50662
604.....50662
621.....50527
651.....50662
652.....50662
653.....50527, 50662
654.....50527
655.....50527
656.....50527

21 CFR
5.....50527
12.....51770
74.....50311, 51145
81.....50311, 51145
82.....50311, 51145
133.....51906
136.....51448
172.....51906
176.....51770
178.....51611
182.....51146–51151, 51612–51615, 51906–51910, 52032
184.....51146–51151, 51612–51617, 51906–51911, 52032
193.....50528, 51453
430.....51290
436.....51290, 51292, 51912
440.....51292, 51294
442.....51292
446.....51290, 51292
448.....51292
449.....51292
450.....51912
452.....51292
546.....51292
520.....50528
522.....50887
558.....50707
561.....50528, 51453

Proposed Rules:
161.....51932
207.....50358
210.....50358
225.....50358
226.....50358
341.....52079
501.....50358
510.....50358
514.....50358
558.....50358
1304.....51329

22 CFR
514.....50707

23 CFR
Proposed Rules:
Ch. 1.....51330

24 CFR
26.....51295
200.....51295
203.....51295, 51455
205.....51295
207.....51295, 51455
213.....51295, 51455
215.....51619
220.....51455
221.....51295, 51455, 51619
232.....51295, 51455
234.....51455
236.....51455, 51619
241.....51295, 51455
242.....51295, 51455
244.....51295, 51455
570.....51295
883.....51296
885.....50888
890.....51619

Proposed Rules:
571.....51935
865.....51785

25 CFR
700.....51771

26 CFR
1.....50711, 52033
4.....52033
35a.....52033

Proposed Rules:
1.....50751, 51330, 51331, 51645, 51788, 51936, 51940, 52079–52087
5c.....51645
6a.....50751
11.....52081
13.....50567, 51788, 52081
52.....50775
301.....51788, 52087

27 CFR
Proposed Rules:
4.....51333, 52088

28 CFR
0.....50712, 50713
3.....50713
8.....50713
9.....50713
9a.....50713
547.....50478
548.....50478

29 CFR
1.....50312
4.....50529
5.....50312
1601.....51772
1910.....51086

Proposed Rules:
1908.....50902

30 CFR
913.....51619
948.....52034

Proposed Rules:
901.....51941
915.....51457
920.....51158
926.....51334
934.....51458, 51459
942.....51335, 51461, 51646
948.....52092
950.....51465

32 CFR
150.....51467

Proposed Rules:
1–39.....50872
95.....51490
505.....50775

33 CFR
90.....51621
165.....50714, 51622

Proposed Rules:
110.....50359, 50360

35 CFR
133.....51472

36 CFR
223.....50889

38 CFR
3.....50313
17.....51913
21.....50529
36.....51152

Proposed Rules:
21.....50568, 50569

39 CFR
111.....52054
601.....50889
3001.....50715, 51337

40 CFR
35.....51400
51.....50686
52.....50530, 50568, 51153, 51472, 51480, 51622, 51942, 51944, 52054, 52055
80.....50482
81.....50316, 52057
86.....52170
120.....51400
123.....51298
131.....51400
180.....50317, 50532, 50533, 51485–51487
228.....50317
271.....50889
420.....51773
434.....50321
439.....50322
468.....50717

Proposed Rules:
52.....51159, 51338, 51339, 51794, 52093, 52094
60.....50670, 51900
61.....51064
81.....50361, 51160, 52094
85.....50902
122.....52279
133.....52258, 52272
180.....50363, 52097
271.....50776
403.....51647
420.....51647
421.....50906
761.....50486

41 CFR
Ch. 7.....51488
5–2.....51299
5–3.....51299
5–16.....51299
101–36.....50890
101–47.....50892

Proposed Rules:
1–15.....50873
3–1.....51648

42 CFR
Proposed Rules:
55a.....50363
71.....50777

43 CFR
Public Land Orders:
422.....51153
2249 (Revised in part by PLO 6489).....50895
6439.....50719
6440.....50893
6477.....50322
6481.....51914

6485.....50893
6486.....50894
6487.....50894
6488.....50895
6489.....50895
6490.....50896
8360.....52058

44 CFR

64.....51914, 52058
67.....50719
205.....51056

Proposed Rules:

67.....50366, 50777, 50778, 51945
151.....50778

45 CFR

96.....52059
302.....51916
801.....50721

Proposed Rules:

1076.....51760

46 CFR

2.....50996
31.....50996
32.....50996
35.....50996
37.....50996
42.....50996
46.....50996
56.....50996
71.....50996
72.....50996
73.....50996
74.....50996
75.....50996
78.....50996
79.....50996
91.....50996
93.....50996
97.....50996
99.....50996
106.....50996
107.....50996
108.....50996
109.....50996
111.....50996
151.....50996
153.....50996
154.....50996
163.....50996
167.....50996
168.....50996
170.....50996
171.....50996
172.....50996
173.....50996
174.....50996
177.....50996
178.....50996
179.....50996
185.....50996
189.....50996
190.....50996
191.....50996
196.....50996

Proposed Rules:

10.....51650
35.....51650
50.....50781
52.....50781
53.....50781
54.....50781
63.....50781
157.....51650
162.....50781
175.....51650
185.....51650
186.....51650
187.....51650

47 CFR

1.....51917
2.....50322, 50722, 50897, 51302
17.....51917
18.....51302
21.....50322, 50722, 50897
22.....50722
23.....50722
31.....50534, 51154
61.....51773
64.....51773
73.....51304, 51623–51627, 51775
74.....50322, 50722, 50897
78.....50722
81.....50548, 50722
83.....50548, 50739
87.....50548, 50722
90.....50722, 51917
94.....50322, 50722, 50897
97.....51917

Proposed Rules:

Ch. I.....51340
1.....51493
22.....51493
64.....51650
73.....50571–50585, 50907 51161, 51652–51663

48 CFR

Proposed Rules:

5.....50907

49 CFR

171.....50440, 50444
172.....50440, 50444
173.....50440, 50444
174.....50440, 50444
175.....50444
176.....50440
177.....50440
178.....50440
179.....50440
509.....51310
567.....51308
571.....52061
1003.....51777
1039.....50897, 51311
1043.....51777
1084.....51777
1118.....51627
1162.....51627
1163.....51627
1175.....52066
1176.....52066

Proposed Rules:

Ch. X.....51664
192.....50908
571.....51795, 52098
1162.....51796

50 CFR

663.....51782
645.....52066
648.....52066

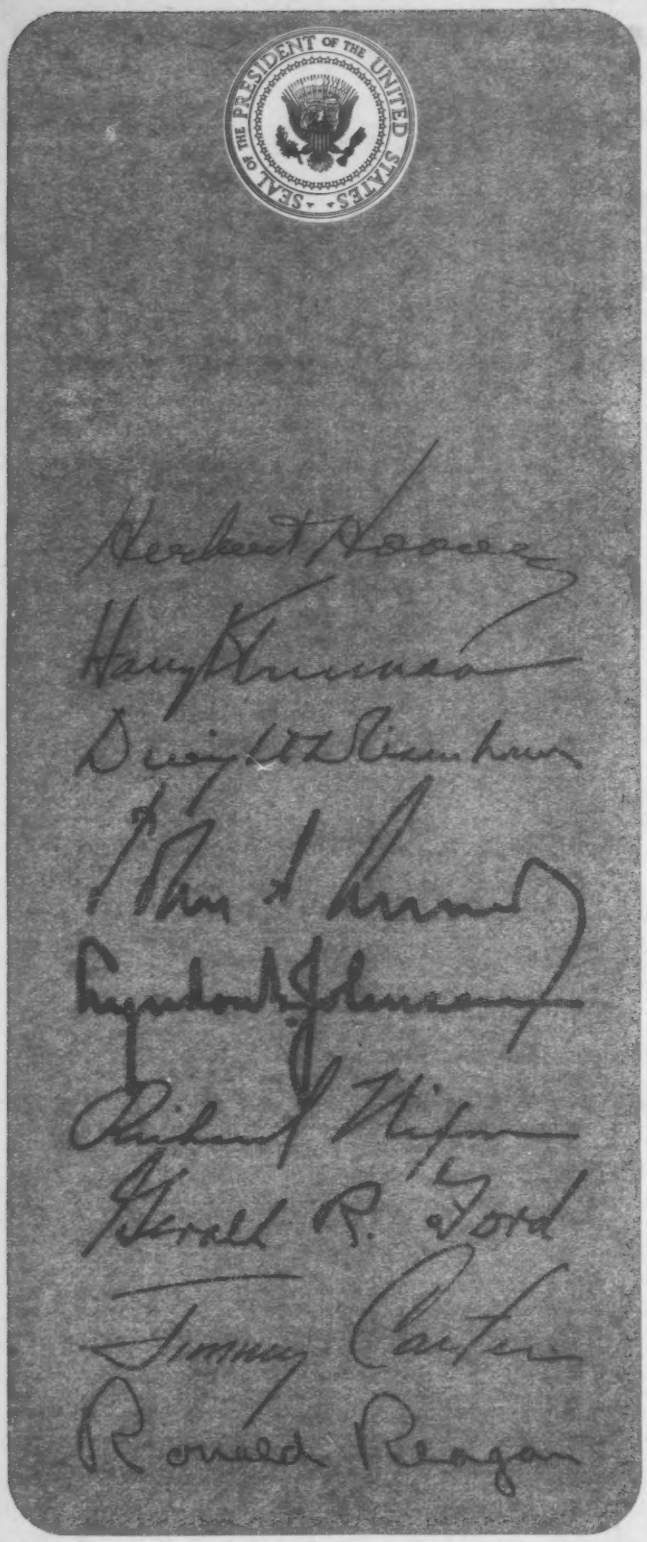
Proposed Rules:

17.....50909, 51736
450.....52099
451.....52099
452.....52099
453.....52099
611.....50379, 50586, 50782
665.....51797
672.....50379
675.....50586

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing November 10, 1983



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